

W. L. Ransom

26

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944.

No. 339

SOUTHERN UTILITIES COMPANY, PETITIONER,

vs.

CITY OF PALATKA

ON A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF FLORIDA

107 Fla 504-9

PETITION FOR CERTIORARI FILED MARCH 24, 1924

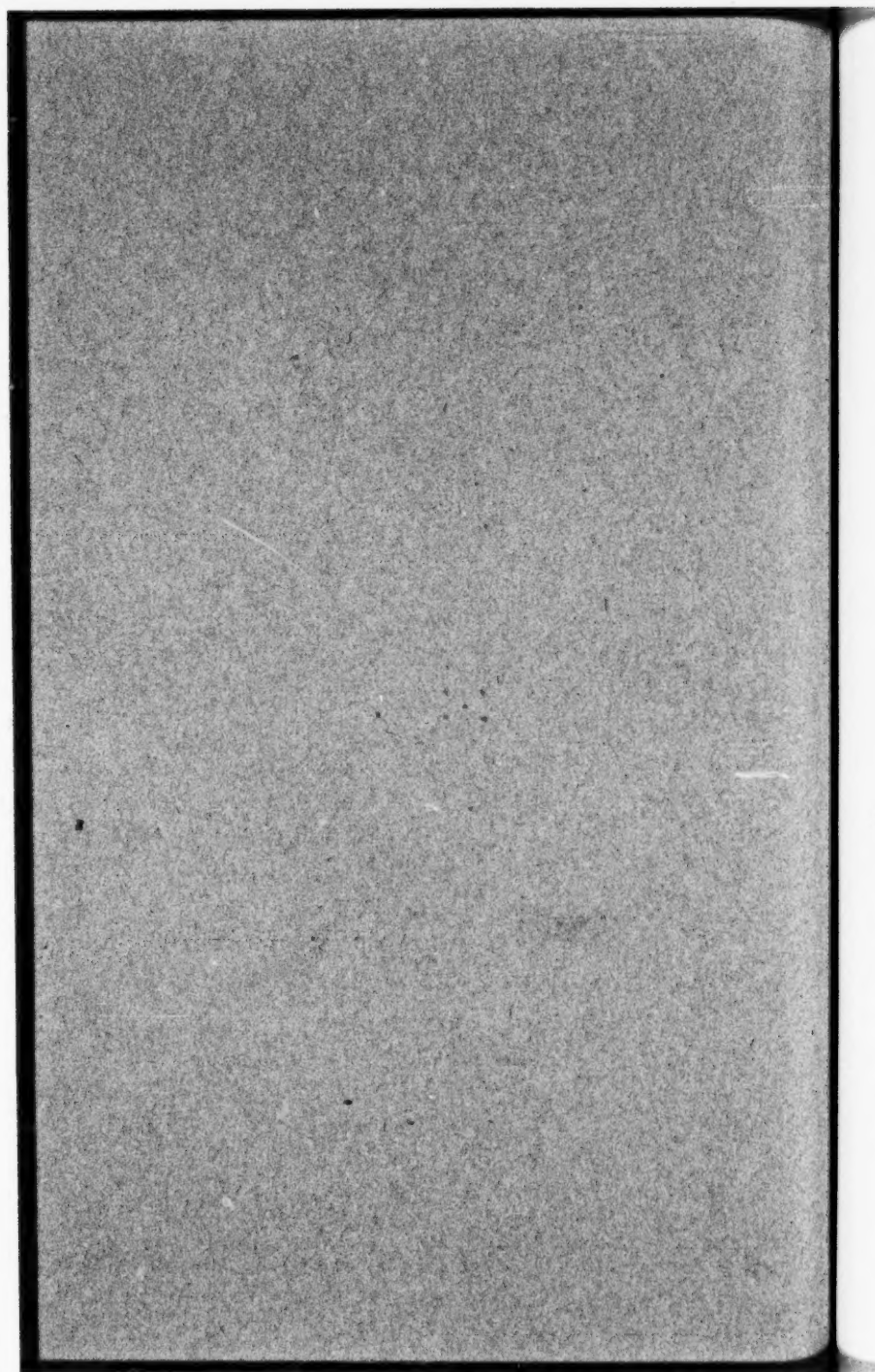
CERTIORARI GRANTED APRIL 31, 1924

(30,235)

517 Franchiser

W. L. Ransom
262/437

9/24/ Tampa & Tampa
and at



(30,225)

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[fol. 1]

Caption—Omitted

IN THE

**CIRCUIT COURT OF FLORIDA, EIGHTH JUDICIAL CIR-
CUIT, IN AND FOR PUTNAM COUNTY**

In Chancery

CITY OF PALATKA, a Municipal Corporation Existing under the Laws
of the State of Florida, Complainant,

vs.

SOUTHERN UTILITIES COMPANY, a Corporation under the Laws of the
State of Florida, Defendant

Bill for Injunction and Other Relief

BILL OF COMPLAINT

To the Honorable A. V. Long, judge of said court:

City of Palatka, a municipal corporation existing under the laws of the State of Florida, complainant, brings this its bill against Southern Utilities Company, a corporation under the laws of the State of Florida, defendant and thereupon complaining says:

[fol. 2] 1. The complainant is a municipal corporation in Putnam County, Florida, organized and existing under and by virtue of the acts of the Legislature of the State of Florida.

2. Southern Utilities Company, defendant, is a corporation organized and existing under the laws of the State of Florida, having its principal place of business in the City of Kissimmee, County of Osceola, State of Florida, and having another of its places of business and its principal operating offices in the City of Palatka, County of Putnam, State of Florida; that said defendant is a public service corporation vested with all the rights, powers and privileges, and upon which is imposed all the duties, obligations and liabilities of a public service corporation under the laws of the State of Florida.

3. Complainant further represents, that on the 21st day of August, A. D. 1914, the City of Palatka, complainant, by ordinance duly and legally passed and adopted by the City Council of said City of Palatka, and approved by the Mayor of said City, gave and granted to the Palatka Gas Light & Fuel Company, a corporation existing under and by virtue of the laws of the State of Florida, and having its principal place of business in the City of Palatka, Putnam County, Florida, and its successors and assigns, the right and privilege to construct, own, operate and maintain in the City of Palatka, Florida, a plant or plants for the manufacture, sale and distribution of electricity,

gas and other illuminants or products for light, power and fuel; and to lay mains, pipes and fixtures under the streets, lanes, alleys, sidewalks and bridges of said city for the distribution of gas, and to erect poles, lamp posts, wires and appliances for the transmission of electricity and power under, through, over and across the said streets, lanes, alleys, sidewalks and bridges of said City for a period of thirty [fol. 3] years from said date.

4. Complainant further represents that as a consideration for the granting of such right and privilege by said city of Palatka to said Palatka Gas Light & Fuel Company and its successors and assigns, said Palatka Gas Light & Fuel Company covenanted and agreed with said City of Palatka as an incident to said grant referred to in paragraph three thereof, that the rates to be charged in the City of Palatka for commercial electric lighting should not be more than ten cents per kilowatt, meter measurement for the first ten years and not more than nine cents per kilowatt thereafter, meters to be furnished and kept in repair by the grantees at its own expense, and the minimum charge should not be more than one dollar and fifty cents per month.

5. Complainant further represents that said Palatka Gas Light & Fuel Company accepted said ordinance or grant, and all the covenants and conditions therein contained, in its entirety, by instrument in writing, and by constructing, owning, operating and maintaining in said City of Palatka, a plant or plants for the manufacture, sale and distribution of electricity, gas and other illuminants or product for light, power and fuel, and erecting poles, lamp posts, wires and appliances for the transmission of electricity and power under, through, over and across the said streets, lanes, alleys, sidewalks and bridges of said City of Palatka.

A certified copy of said ordinance is hereto attached, marked "Exhibit A" and made a part of this bill of complaint by reference to the same extent and for all purposes as if set out herein in full.

A certified copy of instrument accepting said grant is hereto attached, marked "Exhibit B" and made a part of this bill of complaint by reference to the same extent and for all purposes as if set out herein in full.

6. Complainant further represents, that on the 1st day of January, A. D. 1917, the Palatka Gas Light & Fuel Company, a corporation as aforesaid, then enjoying the rights and privileges granted by said City of Palatka and accepted by it, and operating and carrying on the business contemplated by said grant, assigned and transferred the rights and privileges so granted to it by said City of Palatka as aforesaid to the Palatka Public Service Company, a corporation under the laws of the State of Florida, with principal place of business in the City of Palatka, Putnam County, Florida.

7. Complainant further represents that on the 1st day of November, A. D. 1917, the Palatka Public Service Company, a corporation as aforesaid, then enjoying the rights and privileges granted by said City of Palatka to and accepted by said Palatka Gas Light & Fuel

Company, and assigned and transferred to it by said Palatka Gas Light & Fuel Company, and operating and carrying on the business contemplated by said grant and assignment thereof, transferred and assigned said rights and privileges granted and assigned to it as aforesaid to the Southern Utilities Company, a corporation as aforesaid, defendant.

8. Complainant further represents, that said defendant, under said assignment from Palatka Public Service Company, a corporation as aforesaid, to it, accepted said ordinance or grant, and all the conditions, covenants and agreements therein contained, in its entirety, and under said ordinance or grant as assigned to it, has constructed, owned, operated and maintained in the City of Palatka, Florida, a plant for the manufacture, sale and distribution of electricity, and has erected poles, lamp posts, wires and other appliances for the transmission of electricity and power under, through, over and across the streets, lanes, alleys, sidewalks and bridges of said City, and has manufactured, sold and distributed electricity in said City of Palatka from the 1st day of November, A. D. 1917, until the present time, to the City of Palatka for lighting the streets, public places and public [fol. 5] buildings of said City and furnished electricity for light and power to the inhabitants of said City who desired to procure the same, and who paid therefor at the rate charged by said defendant, and enjoyed and exercised all the rights and privileges granted by and incident to said ordinance, and continues to enjoy and exercise all said rights and privileges at this time.

9. Complainant further represents that notwithstanding the conditions and covenants contained in said ordinance, and the duty of said defendant to furnish the City of Palatka and the inhabitants thereof electricity for lighting and power under the terms of said ordinance, the defendant has refused and neglected and still refuses and neglects to comply with the conditions and covenants in said ordinance contained and has charged and collected each month from the inhabitants of said City of Palatka and patrons of said defendant in said City of Palatka, and continues to charge and collect each month from the inhabitants of said City of Palatka and patrons of said defendant in said City of Palatka, for commercial electric lighting, thirteen cents per kilowatt, meter measurement, and a minimum charge of one dollar and fifty cents per month; and complainant says that it has protested to said defendant against such charge in excess of the rate prescribed in said ordinance as incident to the grant of the rights and privileges therein and thereby granted, and repeatedly notified and requested said defendant to comply with the covenants and conditions of said ordinance, and defendant has refused, and still refuses and neglects so to do, persisting in violating the same, and defying the complainant in its efforts to obtain a compliance therewith.

Wherefore complainant, being without remedy in the premises save in a court of equity, prays this Honorable Court to take juris-

diction of the subject matter and the parties to this bill of complaint, and to the end that Southern Utilities Company, a corporation as aforesaid, who is made a party defendant to this bill, may be re-[fol. 6] quired to make full and direct answer to the same, but not under oath, answer under oath being hereby expressly waived; that Southern Utilities Company, a corporation, defendant, may be restrained and enjoined by decree of this Court from charging and collecting from the inhabitants of said City of Palatka and patrons of said defendant in the City of Palatka, said rate of thirteen cents per kilowatt, meter measurement, for commercial electric lighting, or any rate for such commercial electric lighting in the City of Palatka in excess of the rate set out as incident to the grant of the rights and privileges contained in said ordinance, to-wit: the rate of ten cents per kilowatt, meter measurement, that a temporary injunction or restraining order be issued, without notice, out of this Honorable Court, of like character, directed to the defendant, and upon final hearing said temporary injunction be made permanent, and for such other and further relief in the premises as equity may require and to this Court may seem meet and proper.

May it please your Honor to grant the State's most gracious writ of subpoena or summons in Chancery directed to Southern Utilities Company, a corporation under the laws of the State of Florida, defendant, requiring it on a day certain and under a certain penalty, to be and appear before this Honorable Court, and then and there full, true and direct answer make to the allegations herein contained, and to stand to and abide by such order and decree in the premises as to your Honor shall seem meet and agreeable to equity, and complainant will ever pray, etc.

Thos. B. Dowda, W. P. Dineen, & J. J. Canon, Solicitors for Complainant.

Jurat showing the foregoing was duly sworn to by A. M. Steen: omitted in printing.

[fol. 7] STATE OF FLORIDA,
County of Putnam:

AFFIDAVIT OF A. M. STEEN

Personally appeared before me, an officer authorized under the laws of the State of Florida to administer oaths, A. M. Steen, who, after being by me first duly sworn, on oath says that he is Mayor of the City of Palatka, a municipal corporation in Putnam County, Florida, and as such officer is authorized to make this affidavit for and on behalf of said City of Palatka, complainant; that the interest of said City of Palatka, complainant, and the inhabitants of said City, will be unduly prejudiced if the injunction in this cause is not issued immediately or without notice to the defendant, Southern Utilities, a corporation; that said defendant, Southern Utilities Company, a corporation, will charge and collect on the 1st day of Aug-

ust, A. D. 1922, from the inhabitants of said City of Palatka and patrons of said defendant in the City of Palatka, the sum of Thirteen cents per kilowatt, meter measurement, for electric lighting consumed by the inhabitants of said City and patrons of the defendant [fol. 8] fendant in said City during the month of July, 1922, the same being three cents per kilowatt, meter measurement, in excess of the contract rate set out in the ordinance of said City under which the defendant is now operating, or in default of payment of such excessive rate, said defendant, will suspend furnishing electric lighting to the inhabitants of said City and patrons of the defendant in said City, if not enjoined and restrained from so doing, and will continue such excessive rate and charge during the pendency of this suit, if not restrained or enjoined as aforesaid.

A. M. Steen.

Sworn to and subscribed before me this 27 day of July, A. D. 1922. W. A. Williams, Jr., Notary Public, State of Florida at Large. My commission expires July 13th, 1925. (Notarial Seal.)

[fol. 9]

EXHIBIT "A" TO BILL OF COMPLAINT

An Ordinance, to Grant to the Palatka Gas Light & Fuel Company, Its Successors and Assigns, Certain Rights, Franchise and Privileges

Be it ordained by the Mayor and City Council of the City of Palatka, Fla.:

Section 1. That the Palatka Gas Light & Fuel Company, a Corporation created and organized under the laws of the State of Florida in the year 1914, its successors and assigns, hereinafter called the Grantees are hereby given and granted a Franchise, Right, Privilege and Authority, to construct, own, operate and maintain, in the City of Palatka, Florida, plant or plants for the manufacture, sale and distribution of electricity, gas and other illuminants or products for light, power and fuel and the said Grantees, are hereby authorized and empowered to lay such mains, pipes and fixtures, under the streets, lanes, alleys, sidewalks, and bridges of said City for the distribution of gas, and to erect all necessary poles, lamp posts, wires and appliances, for the transmission of electricity and power, along, through, over and across the said streets, lanes, alleys, sidewalks and bridges of said City for the period of thirty years from the passage of this ordinance, provided, however, that said Grantees within thirty days from the passage of this ordinance, shall file with the City Clerk, its written acceptance of this ordinance.

Section 2. All poles used by the Grantees shall be neat and symmetrical and the location of poles and wires within the City limits and the maintenance of same shall be under the supervision of the

City Council and in accordance with its instructions, and Grantees shall replace and properly repair any sidewalks, pavements or streets that may be disturbed by Grantees, at its own expense, and upon the failure of the Grantees so to do after ten days' notice in writing shall have been given by the Mayor or City Clerk of the City, to said Grantees, the City may repair such portions of the sidewalks, pavement or street, that may have been disturbed by said [fol. 10] Grantees, and collect the cost so incurred from the Grantees.

Section 3. The rates to be charged in the City of Palatka for commercial electric lighting shall not be more than ten cents per kilowatt, meter measurement, for the first ten years, and not more than nine cents per kilowatt thereafter, meter to be furnished and kept in repair by the Grantees herein at their expense, and the minimum charge shall be not more than one dollar and fifty cents per month.

Section 4. The rates to be charged in the City of Palatka for electric motor service shall not be more than the following rates: Meter measurement. Two hundred kilowatts or less, eight cents per kilowatt, all in excess of two hundred kilowatts up to five hundred kilowatts, seven cents per kilowatt; all in excess of five hundred kilowatts up to one thousand kilowatts, six cents per kilowatt; all in excess of one thousand kilowatts up to eighteen hundred kilowatts, five cents per kilowatt; all in excess of eighteen hundred kilowatts, four cents per kilowatt; provided that the said Grantees shall not be compelled to furnish electric power to any motor consumer for less than twenty-two dollars per year per rated horsepower of motor as shall be determined by the said Grantees. Meters to be furnished and kept in repair by the Grantees herein at their expense.

Section 5. The rates to be charged in the City of Palatka for electric street lighting purposes shall not exceed the following rates, for all night schedule.

- 2,000 candle power lights, \$75.00 per annum.
- 1,500 candle power lights, \$65.00 per annum.
- 100 candle power lights, \$25.00 per annum.
- 80 candle power lights, \$22.00 per annum.
- 60 candle power lights, \$21.00 per annum.
- 40 candle power lights, \$20.00 per annum.

Section 6. The rates to be charged in the City of Palatka for gas shall not exceed one dollar and sixty cents per thousand cubic feet, [fol. 11] meter measurement, meters to be furnished and kept in repair by the Grantees herein at their expense, and the minimum charge shall not be more than one dollar per month.

Section 7. The Grantee shall not be required to furnish electricity or gas for light or power to any consumer who shall refuse to comply with any reasonable rules and regulations adopted by said company, for the conduct of its business.

Section 8. The Grantees shall at all times be subject to the City ordinances now in existence and which may be hereafter passed

relative to the use of the streets in the City of Palatka and said Grantees and their agents and employees shall be under the same police regulations and liable to the same fine and imprisonment as other persons violating the ordinances of the City of Palatka, provided such ordinances shall in no way abridge or impair the franchise right and privileges hereby granted.

Section 9. Said Grantees shall indemnify against and assume all liability for any and all damages that may be suffered by said City to its property, or to which said City may become liable in any manner for damage to the person or property of others on account of or through the carelessness or negligence of said Grantees, their officers, employes, agents or servants, or on account of the failure of said Grantees to comply with any ordinance of said City relative to the use of its streets.

Section 10. The said Grantees, shall, within nine months from date of this ordinance, so enlarge, extend, improve and equip its electric light plant in the City of Palatka, that it will then be capable of furnishing all electric lights and power required under the terms of this ordinance that may be necessary to then supply the demand and requirement of the business and people of the City of Palatka then attached and from time to time shall so continue to improve and extend said plant as to meet the growing demand of the business and people of the City of Palatka, so that said plant [fol. 12] shall at all times be capable of providing ample and sufficient electricity, light and power for the City of Palatka; and the said Grantees shall within nine months begin the operation of said electric plant and shall thereafter operate the same on a twenty-four hour per day schedule, and continue so to operate the same day and night, thereby giving a continuous electric current for all necessary purposes during the life of this franchise, excepting failures caused by the act of God, war, strikes and unavoidable accidents.

Section 11. The said Grantees shall provide and keep in repair one cross arm on each pole when requested by the City Council, for the free use of the City of Palatka in operating a police or fire alarm system or both and shall also provide and equip the power plant of the grantees herein with a fire alarm whistle, and shall upon notice by the City of its authorities, cause to be blown a fire alarm upon said fire alarm whistle indicating the ward within which a fire may occur.

Section 12. The City of Palatka gives and grants the franchise, rights and privileges herein set forth, reserving the right and requiring the grantees as a condition precedent to the taking effect of this grant to give and grant to the City of Palatka the right and privilege at the period of ten, twenty and thirty years from the passage of this ordinance to purchase said plant or plants used under and in connection with the franchise and rights hereby granted in accordance with the laws of the State of Florida, at a valuation of the property real and personal which valuation shall be fixed by arbi-

tration as may be provided by law, provided however, that should the City elect to purchase at the ten or twenty year period, the Grantees shall have three months' notice of such intention on the part of the City to do so.

Section 13. The said Grantees shall, whenever requested by the said City, extend its wires and install street lights at such places within the City of Palatka as the said City may require, provided the said Grantees shall be paid for at least one street light for every [fol. 13] seven hundred and fifty feet of extension.

Section 14. A substantial failure on the part of the Grantees herein to comply with the terms and provisions of this ordinance shall work a forfeiture thereof, provided, however, that there shall be no forfeiture unless declared by the said City, for legal cause on substantial ground.

Section 15. That the written acceptance of the provisions in this ordinance by the Grantees as herein provided shall be taken and construed to be a surrender by said Grantees of all rights, privileges, franchises, and powers granted to said grantees under and by virtue of an ordinance entitled "An Ordinance to Grant Certain Privileges to the Palatka Gas Light & Fuel Company," passed in open Council Oct. 20th, 1885, and passed by the Council over the Mayor's veto, October 27th, 1885.

Section 16. That the said Grantees shall furnish to the said City of Palatka free of charge, lights for the City Hall Building.

Section 17. The said City of Palatka does hereby reserve unto itself the right and privilege to at any time erect, install and operate an electric light and gas plant or plants in said City.

Section 18. All ordinances and part of ordinances in conflict with the provisions of this ordinance be and the same are hereby repealed.

Passed in open council this 21st day of August, A. D. 1914.

J. H. Yelverton, Jr., President City Council. (Seal.)

Attest: W. A. Williams, City Clerk.

Approved this 21st day of August, A. D. 1914. S. J. Kennerly, Mayor.

[fol. 14] STATE OF FLORIDA,
City of Palatka:

I, R. C. Howell, City Clerk of the City of Palatka, in Putnam County, Florida, hereby certify that the above and foregoing is a true and correct copy of what it purports to be from the face thereof, as the same appears of record in Ordinance Book No. 2 of said City.

In testimony whereof, I have hereunto set my hand and affixed the seal of said City of Palatka, this 27th day of July, A. D. 1922.

R. C. Howell, City Clerk, City of Palatka, Putnam County, Florida. (Seal.)

[fol. 15]

EXHIBIT "B" TO BILL OF COMPLAINT

This indenture, made and executed this 17th day of September, A. D. 1914, by and between Palatka Gas Light & Fuel Company, a corporation created and organized under the laws of the State of Florida, in the year 1914, having its principal place of business in Putnam County, Florida, party of the first part, and City of Palatka, a municipal corporation under the laws of the State of Florida, party of the second part.

Witnesseth: that whereas the City of Palatka by an ordinance entitled "An Ordinance to Grant to the Palatka Gas Light & Fuel Company, its successors and assigns, certain rights, franchises and privileges, passed in open Council the 21st day of August, A. D. 1914, approved the 21st day of August, A. D. 1914, by the Mayor of the City of Palatka, granted to the Palatka Gas Light & Fuel Company, its successors and assigns, certain rights, franchises and privileges, and therein required the Palatka Gas Light & Fuel Company, as a condition precedent to the taking effect of the said ordinance, to give and grant to the said City of Palatka, the right and privilege at the periods of ten, twenty and thirty years, to purchase said plant or plants used under or in connection with the franchises and rights therein granted in accordance with the laws of the State of Florida.

And that whereas, in section 1 of said ordinance, it was provided that the said Palatka Gas Light & Fuel Company should within thirty days from passage of said ordinance, file with the City Clerk its written acceptance of said ordinance.

Now, therefore, the said Palatka Gas Light & Fuel Company has given and granted and does by this instrument give and grant to the municipality of the City of Palatka, the right and privilege at the periods of ten, twenty and thirty years from the passage of said ordinance to purchase the said gas and electric plants, or other property used under or in connection with such franchise or rights, or [fol. 16] such part of such property as the municipality may desire to purchase at a valuation of the property real and personal, desired, which valuation shall be fixed by arbitration as may be provided by law, provided, however, that should the City of Palatka elect to purchase at the ten or twenty year period, the said Palatka Gas Light & Fuel Company, its successors or assigns, shall have three months' notice of such intention on part of said City of Palatka so to do; and the said Palatka Gas Light & Fuel Company does hereby accept the said ordinance and files this its written acceptance thereof.

In witness whereof, the Palatka Gas Light & Fuel Company has caused its corporate name to be signed to this instrument, by its President thereunto duly authorized, and its corporate seal affixed and attested by its Secretary thereunto duly authorized, and for and in behalf of said corporation and as its act and deed, the day and year herein first above written.

Palatka Gas Light & Fuel Company, by G. Loper Bailey,
President.

Attest: R. West Bailey, Secretary. (Corporate Seal.)

Signed, sealed and delivered in the presence of the undersigned witnesses: Fred T. Merrill, M. Ramsaur.

STATE OF FLORIDA,
County of Putnam:

Personally appeared before me G. Loper Bailey and R. West Bailey, to me well known, who acknowledged to and before me that they executed the foregoing instrument as President and Secretary of Palatka Gas Light & Fuel Company for and in behalf of said [fol. 17] Palatka Gas Light & Fuel Company and as its act and deed, and that they were respectively thereunto duly authorized.

In witness whereof, I hereunto set my hand and notarial seal at Palatka, Florida, this 17th day of September, A. D. 1914.

Fred T. Merrill, Notary Public, State of Florida at Large.
My commission expires on the 25th day of March, A. D. 1917. (Notarial Seal.)

STATE OF FLORIDA,
County of Putnam:

I, R. C. Howell, City Clerk of the City of Palatka, in Putnam County, Florida, hereby certify that the above and foregoing is a true and correct copy of what it purports to be from the face thereof, as the same appears of file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said City of Palatka this 27th day of July, A. D. 1922.

R. C. Howell, City Clerk City of Palatka, Putnam County, Florida. (Seal of City of Palatka.)

[fol. 18] IN CIRCUIT COURT OF PUTNAM COUNTY

SUMMONS

On July 27, 1922, a subpoena in chancery was duly issued directed to the defendant.

On July 28, 1922, the said subpoena was duly served upon the defendant, and the defendant thereafter filed its appearance.

[File endorsement omitted.]

IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

CERTIFICATE OF DISQUALIFICATION—Filed July 28, 1922

This cause coming on to be heard upon the application of complainant for temporary injunction, and it appearing that the Judge of this Court is disqualified to act upon said application or entertain

[fol. 19] any proceedings in this cause, in this, that the Judge of this Court is an inhabitant of the City of Palatka, complainant, and a consumer of electric lighting in said City of Palatka, and would be directly benefited or affected by the granting or denial of said injunction; therefore, upon consideration thereof,

It is ordered and adjudged that the Judge of this Court be and he is hereby declared disqualified to act upon said application or entertain further proceedings in this cause, and the parties hereto are hereby granted leave to proceed in this cause as by statute in such case made and provided.

Done in Chambers at Palatka, Florida, in said Circuit, this 28 day of July, A. D. 1922.

A. V. Long, Judge.

IX CIRCUIT COURT OF PUTNAM COUNTY

TEMPORARY RESTRAINING ORDER

On July 28, 1922, Honorable Daniel A. Simmons, Judge of the Circuit Court for Duval County, Florida, as Judge pro hac vice, made an order for an injunction temporarily enjoining and restraining the defendant in accordance with the prayer of the bill of complaint, which said order is in the words and figures as follows:

This cause coming on for hearing before me upon application of complainant for a temporary injunction, Hon. A. V. Long, Judge of said Court, having certified his disqualification, it is ordered that the hearing of said application be and is set for August 28, 1922, at 10:00 A. M. It is further ordered that the respondent, Southern Utilities Company, a corporation, be and is temporarily, and until after the said hearing, restrained from collecting from inhabitants of the City of Palatka and patrons of the said respondent in the City of Palatka, more than ten (10) cents per kilowatt, meter measurement for electricity for commercial electric lighting, including the lighting of homes.

This order shall become effective upon the furnishing by the complainant of a good and sufficient bond in the sum of one thousand [fols. 20-22] dollars (\$1,000.00) to be approved by the clerk of the Circuit Court of Putnam County, conditioned to pay to respondent such costs and damages as it may sustain by the improper issuance of this order in case the same shall be hereafter vacated, or the bill of complaint dismissed.

Done this July 28th, 1922.

Dan'l A. Simmons, Judge pro hac vice.

Received the order on the reverse side hereof this July 29th, 1922, and executed the same on July 29th, 1922, in Putnam County, Florida, upon the defendant, Southern Utilities Company, a corporation, by delivering a true copy thereof to A. W. Houston, Vice-President and General Manager of said corporation, in Putnam County, Florida, in the absence of the President of said cor-

poration, at the same time showing him the original and explaining to him the contents thereof.

Done in Putnam County, Florida, this July 29th, 1922.

P. M. Hagan, Sheriff, by W. T. Minton, Deputy Sheriff

BOND ON TEMPORARY RESTRAINING ORDER FOR \$1,000—Approved and filed July 29, 1922; omitted in printing

[fol. 23] IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

TEMPORARY INJUNCTION

To Southern Utilities Company, a corporation, Greeting:

Whereas, the City of Palatka, a municipal corporation under the laws of the State of Florida, has exhibited its bill of complaint in the Circuit Court of the Eighth Judicial Circuit of Florida, in and for Putnam County, in Chancery, on the 27th day of July, A. D. 1922, against you, praying to be relieved touching the matters therein complained of; and,

Whereas, by an order of Court, dated the 28th day of July, A. D. 1922, it was ordered that the hearing on the application for temporary injunction be and is set for August 28th, 1922, at 10:00 a. m.; and,

Whereas, in and by said order it was further provided, that the respondent, Southern Utilities Company, a corporation, be and is temporarily and until after the said hearing restrained from collecting from inhabitants of the City of Palatka and patrons of the said respondent in the City of Palatka more than ten (10) cents per kilowatt, meter measurement, for electricity for commercial electric lighting, including the lighting of homes, upon said City making bond in the sum of \$1,000.00 to be approved by me.

[fol. 24] Now, therefore, you will take notice that I have this day approved bond submitted and filed by the City of Palatka, a municipal corporation as aforesaid, complainant, in the sum of one thousand dollars, with the American Surety Company, of New York, as surety, and that under and by the terms of said order of Court, dated the 28th day of July, A. D. 1922, you are temporarily and until after the said hearing restrained from collecting from inhabitants of the City of Palatka and patrons of the Southern Utilities Company, a corporation, in the City of Palatka more than ten (10) cents per kilowatt, meter measurement, for electricity for commercial electric lighting, including the lighting of homes.

Witness the Honorable R. J. Hancock, Clerk of said Court, and the seal of said Court, this 29th day of July, A. D. 1922.

R. J. Hancock, Clerk Circuit Court, Putnam County, Florida, by W. A. Williams, Jr., Deputy Clerk. (Court Seal.)

Received this order this 29th day of July, 1922, and executed the same on the 29th day of July, 1922, upon the defendant Southern Utilities Company, a corporation, by delivering a true copy hereof to A. W. Houston, Vice-President and General Manager of said corporation, resident in Putnam County, Floria, in the absence of the President of said corporation, at the same time showing him this original and explaining to him the contents hereof.

Done in Putnam County, Florida, this 29th day of July, 1922.

P. M. Hagan, Sheriff, by W. T. Minton, Deputy Sheriff.

[fol. 25] IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

MOTION TO DISSOLVE TEMPORARY INJUNCTION AND AFFIDAVIT
THERE TO—July 31, 1922

Comes now the defendant, Southern Utilities Company, by counsel and moves the court to dissolve the temporary injunction or restraining order granted in above entitled cause of action on July 28, 1922 and as grounds for said motion says:

1. The allegations in the bill of complaint are not sufficient to warrant the granting of the temporary injunction.

2. The affidavit attached to the bill of complaint does not allege facts sufficient to warrant the granting of the temporary injunction without notice to defendant.

3. The bond required by the temporary injunction is not sufficient to protect the defendant.

4. The order does not show by what authority the Judge granted same or that he was in his circuit when same was signed.

W. B. Crawford, Attorney for Defendant.

[fol. 26] STATE OF FLORIDA,
Putnam County, ss:

Before the undersigned authority this day personally came A. W. Houston, who after being duly sworn deposes and says that he is Vice President & General Manager of the Southern Utilities Company, a Florida corporation, defendant in that certain cause pending in the Circuit Court of the Eighth Judicial Circuit of Florida, in and for Putnam County, in which the City of Palatka is Complainant, and the Southern Utilities Company is Defendant; that as such Officer of said Company he has active management of the operation of said Company and full custody of all of its records; that the difference between the rate of 10 cents per kilowatt hour and 13 cents per kilowatt hour for electricity furnished by said Southern Utilities Company to its patrons in the City of Palatka for one

month is approximately Seven Hundred and Fifty (\$750.00) Dollars; that if the temporary Injunction granted in the Court herein described on July 28th, 1922 is dissolved on the date set for the hearing of same on August 28th, 1922, the approximate loss to said Southern Utilities Company by reason of said Injunction restraining said Company from collecting the present rate of 13 cents per kilowatt hour for electricity furnished the patrons of Palatka, Florida, the loss will be approximately Fifteen Hundred (\$1,500.00) Dollars in addition to other expenses incident to the continuing of said temporary Injunction, which must be paid by the Southern Utilities Company; that said rate of 13 cents per kilowatt hour for electricity furnished has been charged by said Company and collected from the patrons of said Company for a period of six (6) months since said City of Palatka alleges said Company had no right to charge the same, and that no action has been taken by said Plaintiff Company prior to the issuance of said Injunction of July 28th, 1922, and that said Injunction was issued without any notice whatsoever to said defendant Company, and said deponent further [fol. 27] says that irreparable injury will not result to the patrons of said defendant Company if said Injunction should be dissolved, and that said City of Palatka, and the patrons of said defendant Company have had time to give notice to said defendant Company of its intention to apply for said Injunction.

A. W. Houston.

Sworn to and subscribed before me this the 29th day of July 1922. E. W. Neate, Notary Public. (Seal.)

[File endorsement omitted.]

IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

ORDER OVERRULING MOTION TO DISSOLVE TEMPORARY INJUNCTION —July 31, 1922

This cause coming on to be heard before the undersigned, the Judge of the Seventeenth Judicial Circuit of Florida, in and for [fol. 28] Orange County, Florida, Honorable A. V. Long, Judge of the Eighth Judicial Circuit of Florida having certified his disqualification, upon the motion of the defendant to dissolve the temporary restraining order heretofore granted by the Honorable Daniel A. Simmons and the same having been argued by the solicitors for the respective parties, and the Court being fully advised in the premises, It is

Ordered that said motion be, and the same is hereby denied.

It is further ordered that the complainant, City of Palatka, a municipal corporation, furnish additional bond within three days from

the date hereof, running to the defendant in the sum of One Thousand Dollars, to be approved by the Clerk of the Circuit Court for Putnam County, Florida, conditioned to pay to the defendant such costs and damages as it may sustain by the improper issuance of said temporary restraining order, in case the same shall be hereafter vacated, or the bill of complaint dismissed.

Done in chambers at Orlando, Orange County, Florida, in said Seventeenth Judicial Circuit of Florida, this 31 day of July, A. D. 1922.

C. O. Andrews, Judge Seventeenth Judicial Circuit of Florida.

[fol. 29] BOND ON TEMPORARY INJUNCTION FOR \$1,000—Approved and filed Aug. 2, 1922; omitted in printing

[fol. 30] [File endorsement omitted]

[fol. 31] IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

SUPPLEMENTAL MOTION TO DISSOLVE TEMPORARY INJUNCTION—
Filed Aug. 1, 1922

Comes now the defendant, by its solicitors, and moves the court to dissolve the temporary injunction herein granted on the 28th day of July, A. D. 1922, and for grounds of said motion sets forth and shows:

1. No facts are alleged in the bill of complaint or made to appear by supporting affidavit sufficient to dispense with the notice required by equity rule 46.

2. It appears from an inspection of the bill of complaint and the file marks thereon that upwards of four full days intervened between the filing of said bill of complaint and the time when any possible injury could have been suffered by the complainant, within which time sufficient notice could have been given to the defendant.

3. It is not alleged that the giving of notice to the defendant would have accelerated the apprehended injury.

4. It affirmatively appears that the giving of the notice required by rule 46, governing upon this court, would not have accelerated [fol. 32] the apprehended injury.

5. No irreparable injury is made to appear nor are any facts alleged from which any irreparable injury could have been reasonably apprehended.

6. It affirmatively appears that the only possible injury to the complainant is reducible to dollars and there is no allegation that the defendant is insolvent.

7. It does not appear that the order for the temporary injunction was issued by any one having lawful authority to make said order.

W. B. Crawford, J. T. G. Crawford, Solicitors for Defendant.

[File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

DEMURRER TO BILL OF COMPLAINT—Filed Aug. 1, 1922

Comes now the defendant Southern Utilities Company, a corporation organized and existing under the laws of the State of Florida, [fol. 33] by its solicitors, and says that the bill of complaint herein is bad in substance, and demurs thereto upon the following grounds:

1. The bill of complaint does not make or state any cause for equitable relief.

2. It is not alleged that the franchise rate of ten cents per kilowatt meter measurement yields to the defendant a reasonable compensation.

3. It is not alleged that the rate of thirteen cents per kilowatt meter measurement is excessive.

4. The franchise rate of ten cents per kilowatt meter measurement is not now binding either upon the complainant or upon the defendant.

5. It is not alleged that the complainant has ever been authorized by the Legislature of the State of Florida to fix by contract rates to be charged for electrical current over any period of time including the time the bill of complaint here was filed.

6. It is not alleged that the complainant has any legislative authority to regulate rates to be charged for electric current.

7. It is not alleged that the complainant has in any lawful manner attempted to regulate the rates to be charged for electrical current.

W. B. Crawford, J. T. G. Crawford, Solicitors for Defendant.

We, the solicitors for the defendant in the above entitled cause, do hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

W. B. Crawford, J. T. G. Crawford.

Jurat showing the foregoing was duly sworn to by A. W. Houston omitted in printing.

[fol. 34] IN CIRCUIT COURT OF PUTNAM COUNTY

STATE OF FLORIDA,
County of Putnam:

AFFIDAVIT OF J. E. JOHNSON—Filed Aug. 12, 1922

Before the undersigned authority, this day personally came J. E. Johnson, who, after being by me first duly sworn, on oath, says that he is an inhabitant of the City of Palatka and a consumer of electricity in the City of Palatka furnished by Southern Utilities Company, a Florida corporation, defendant in that certain cause pending in the Circuit Court of the Eighth Judicial Circuit of Florida, in and for Putnam County, in which the City of Palatka is complainant; that he is a member of the City Council of the City of Palatka; that said Southern Utilities Company has charged the rate of thirteen cents per kilowatt hour for electricity for commercial electric lighting furnished the inhabitants of the City of Palatka and patrons of the defendant in the City of Palatka, including this affiant, for the past six months, said charge of thirteen cents per kilowatt hour being three cents per kilowatt hour in excess of the contract rate set out in the ordinance of said City under which the defendant is now operating.

Affiant further says that said Southern Utilities company accepted the grant from the City of Palatka and operated under the same as in the bill of complaint alleged, and further recognized the same [fol. 35] as a contract binding on it as to the rate to be charged for commercial electric lighting in the City of Palatka, by making application to the City Council of said City, during the World War for temporary contract by the terms of which the defendant could increase its rate from ten cents per kilowatt hour, as provided in its contract with the City, to thirteen cents per kilowatt hour, and in said application agreed to return to the then existing contract rate at the expiration of said temporary contract, which authority was granted by the City; that the authority granted to increase said rate as aforesaid, expired on the 1st day of January, 1922, and said Company was notified to comply with the terms of its contract; that said company has since been repeatedly notified by officers and agents of the City of Palatka to comply with the terms of said contract, and this affiant, personally and as a member of the City Council of the City of Palatka, has each month protested against such excessive charge, and said company has refused to comply with its contract and still refuses so to do.

Affiant further says that if the temporary injunction or restraining order granted by the Court on the 28th day of July, A. D. 1922, had not been granted, the interest of the City of Palatka and the

inhabitants of said City would have been unduly prejudiced, and said City and its inhabitants would have suffered irreparable injury; that notice to said defendant would have accelerated the apprehended injury; and that if said temporary injunction or restraining order be dissolved at this time, or hereafter, the interest of the City of Palatka, the inhabitants of said City and patrons of said defendant will be unduly prejudiced and will suffer irreparable injury, in this:

That said temporary injunction or restraining order granted on the 28th day of July, 1922, became effective, and could only become effective, upon the complainant furnishing bond as therein provided, and notice that said injunction had been perfected and was effective was served on the defendant on the afternoon of July 29th, 1922; that the agent of said Southern Utilities Company had, [fol. 36] before the 29th day of July, 1922, read the meter installed by the defendant in affiant's dwelling, and other meters installed by defendant, and made the charge for electricity consumed during the month of July; that affiant on the 31st day of July, 1922, received a statement or notice from Southern Utilities Company notifying him that he was indebted to said company in the sum of \$3.77, which amount represented 29 kilowatt hours of electricity consumed by him during the month of July at the rate of thirteen cents per kilowatt hour, meter measurement, and in said notice further notified affiant that in default of payment of said sum before the 10th day of August, service might be discontinued without further notice and that a service charge of \$1.50 would be imposed upon affiant for re-connecting meter. And affiant says that said statement or notice was deposited in the Postoffice at Palatka, Florida, as shown by the postmark thereon, on the 29th day of July, 1922, at 11 o'clock, p. m., which was several hours after the temporary injunction or restraining order was served upon the defendant, and affiant says that if notice had been given the defendant of application for temporary injunction or restraining order, the said excessive sum above referred to would have been paid to and collected by the defendant before said temporary injunction or restraining order could have been made effective.

Affiant further says that if the temporary injunction or restraining order granted be dissolved, the defendant will collect the charge so made for electricity furnished during the month of July, to-wit, the sum of Thirteen cents per kilowatt hour, meter measurement, the same being three cents per kilowatt hour in excess of the contract rate set out in the ordinance under which the defendant is now operating, and will continue to charge and collect said excessive rate each month hereafter; or in default of the payment of such excessive rate, the defendant, under rules and regulations promulgated by it, will suspend furnishing commercial electric lighting [fol. 37] to the inhabitants and patrons of the defendant in the City of Palatka.

Affiant further says that if the temporary injunction or restraining order be dissolved, and the defendant allowed to collect said

excessive rate, affiant will be compelled to maintain an action at law to recover the sums so paid by him in excess of the contract rate, to-wit, three cents per kilowatt hour, and each patron of the defendant in the City of Palatka, numbering several hundred, will be compelled to bring his action at law to recover the sums paid by him in excess of said contract rate.

J. E. Johnson.

Sworn to & subscribed before me this 7th day of August,
A. D. 1922. G. C. Alderman, Notary Public, State of
Florida at Large. (Seal.)

[File endorsement omitted.]

STATE OF FLORIDA,
County of Putnam:

AFFIDAVIT OF GEORGE VELIASISH—Filed Aug. 12, 1922

Before the undersigned authority this day personally appeared George Veliasish, who after being by me first duly sworn on oath says, that he is an inhabitant of the City of Palatka and a consumer of electricity for commercial electric lighting in the City of Palatka at his place of business known as Chick's Quick Lunch, furnished by Southern Utilities Company, a Florida corporation, defendant in that certain cause pending in the Circuit Court of Florida, Eighth Judicial Circuit in and for Putnam County, in which the City of Palatka is complainant; that said defendant company has charged and collected the rate of thirteen cents per kilowatt hour for electricity for commercial electric lighting furnished the inhabitants of the City of Palatka, and patrons of the defendant in the City of Palatka, including this affiant, for the past six months, the said charge of thirteen cents per kilowatt hour being three cents per kilowatt hour in excess of the contract rate set out in the ordinance of said city under which the defendant is now operating.

Affiant further says that if a temporary injunction or restraining order granted by the Court on the 28th day of July, 1922, had not been granted, the interest of the City of Palatka and the inhabitants of said City would have been unduly prejudiced and the said City and its inhabitants would have suffered irreparable injury; that notice to said defendant would have accelerated the apprehended injury, and that if said temporary injunction or restraining order be dissolved at this time or hereafter, the interest of the City of Palatka, the inhabitants of said City and patrons of said defendant will be unduly prejudiced and will suffer irreparable injury, in this:

That said temporary injunction or restraining order granted on the 28th day of July, 1922, became effective and could only become effective upon the complainant furnishing bond as therein pro-

vided, and notice that said injunction had been perfected and was effective was served upon the defendant on the afternoon of July 29th, 1922; that the agent or servant of said defendant had, before the 29th day of July, 1922, read the meter installed by the defendant in the place of business of said affiant and other meters installed by defendant in the City of Palatka, and made the charge for electricity consumed by the patrons of the defendant in the city of Palatka during said month of July; that on the 31st day of July, 1922, said deponent received a statement or notice from the defendant notifying him that he was indebted to said company in the sum of 28.86 dollars, which represented 222 kilowatt hours of electricity consumed by him during the month of July at the rate of [fol. 39] thirteen cents per kilowatt hour meter measurement, and in said notice deponent was further notified that in default of payment of said sum before the 10th of August service would be discontinued without further notice and a service charge of \$1.50 would be imposed for re-connecting meter; and affiant says that said statement or notice, as was similar notices and statements to patrons of the defendant in the City of Palatka, was deposited in the postoffice at Palatka, Florida, as shown by the post mark thereon, on the 29th day of July, 1922, and affiant says that if notice had been given to defendant of application for injunction or restraining order the said excessive charge above referred to would have been paid to and collected by the defendant before such temporary injunction or restraining order could have been granted and made effective.

Affiant further says that if the temporary injunction or restraining order granted be dissolved, the defendant will collect the charge so made for electricity during the month of July, to-wit, the sum of thirteen cents per kilowatt hour, being three cents in excess of the contract rate set out in the ordinance under which the defendant is now operating, and will continue to charge and collect said excessive rate each month hereafter; or in default of the payment of such excessive rate, the defendant, under the rules and regulations promulgated and enforced by it, will suspend furnishing commercial electric lighting to the inhabitants and patrons of said defendant in the City of Palatka.

Affiant further says that if the temporary injunction or restraining order be dissolved, and the defendant allowed to collect said excessive rate, affiant will be compelled to maintain an action at law to recover the sum so paid by him in excess of the contract rate, to-wit, three cents per kilowatt hour, and each patron of the defendant in the City of Palatka, numbering several hundred, will be compelled to bring separate actions at law to recover the sums paid [fol. 40] by them in excess of said contract rate, thereby necessitating a multiplicity of actions. And affiant says that if said temporary injunction or restraining order be dissolved and defendant allowed to collect said excessive rate, affiant will be compelled to employ an attorney in maintaining his action at law for the recovery of said excessive charge, and pay out other sums of money necessary in maintaining his said action, the amount of which cannot be as-

certained at this time, and that other patrons of said defendant will be compelled in like manner to incur similar expenses, and affiant says that the damage to the inhabitants of the City of Palatka and patrons of the defendant in the City of Palatka cannot be ascertained or calculated at this time, should said temporary injunction or restraining order be dissolved. And affiant says that the damage to the City of Palatka, its inhabitants and patrons of the defendant in said City would be great, irreparable and their rights unduly prejudiced, and their damage through the dissolution of said temporary injunction or restraining order would be greater than the possible damage to the defendant through the continuance of same.

George Veliasish.

Sworn to and subscribed before me this 11th day of August,
A. D. 1922. Thos. B. Dowda, Justice of the Peace, 8th
District, Putnam County, Florida. (Seal.)

[File endorsement omitted.]

[fol. 41]

IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

ORDER OVERRULING DEMURRER

This cause coming on to be heard before the undersigned, the Judge of the Circuit Court of Florida, for Duval County, Florida, the Honorable A. V. Long, Judge of the Circuit Court of Florida, 8th Judicial Circuit, for Putnam County, having certified his disqualification, upon demurrer to the bill of complaint filed herein, and motion to dissolve the temporary injunction or restraining order heretofore granted and the same having been argued by counsel for the respective parties, and the Court being fully advised in the premises, it is therefore,

Ordered that the demurrer to the bill of complaint be, and each ground of demurrer is, hereby overruled.

It is further ordered that the motion to dissolve the temporary injunction or restraining order be, and the same is hereby denied.

It is further ordered that the temporary injunction or restraining order heretofore granted by this court be effective until the further order of Court and the said Southern Utilities Company, a corporation, defendant, according to the terms of said former order and of this order, be, and they are hereby, temporarily and until the further order of Court restrained and enjoined from collecting from the inhabitants of the City of Palatka and patrons of the [fol. 42] defendants in the City of Palatka more than ten cents per kilowatt hour meter measurement for electricity furnished by said defendant for commercial electric lighting, including the lighting of homes.

It is further ordered that the complainant furnish a good and sufficient bond in the sum of two thousand dollars, to be approved by the Clerk of the Circuit Court of Putnam County, conditioned to pay to the defendant such costs and damages as it may sustain by the improper issuance of this order in case the same shall be hereafter vacated or the bill of complaint dismissed.

Done in chambers, at Jacksonville, Duval County, Florida, this 16th day of August, A. D. 1922.

Daniel A. Simmons, Judge of the Circuit Court for Duval County, Florida, pro Hac Vice-Judge of the Eighth Judicial Circuit of Florida, disqualified.

[fol. 43] BOND ON TEMPORARY INJUNCTION FOR \$2,000—Approved and filed Aug. 18, 1922; omitted in printing

[fol. 44] [File endorsement omitted.]

[fol. 45] IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

MOTION FOR ORDER REQUIRING ADDITIONAL BOND AND AFFIDAVIT THERETO—Filed Sept. 12, 1922

Comes now the respondent in above entitled cause of action and moves the court for an order requiring complainant in above entitled cause of action to give additional bond for the better protection of respondent.

Respectfully submitted, W. B. Crawford, Counsel for respondent.

[File endorsement omitted.]

STATE OF FLORIDA,
Putnam County:

Before the undersigned authority this day personally came Emmons Graham, who, after being sworn, deposes and says that he is the manager of the Palatka electric light plant and works of Southern Utilities Company and has been such manager for more than a year; that as such manager he has active management of the operation of the said electric light plant and works of said Southern Utilities Company in the City of Palatka, Florida, and has full custody of all of the records pertaining to said plant; that the books of said company show that the total amount of electricity supplied to its patrons during the month of July, 1922, at the rate of thirteen

[fol. 46] cents per kilowatt hour, meter measurement, amounts to \$3,243.54, and that the same amount of electricity figured at the rate of ten cents per kilowatt hour, meter measurement, would amount to \$2,612.28; that the total amount of electricity furnished for the month of August, 1922, at the rate of thirteen cents per kilowatt hour, meter measurement, amounts to \$3,067.63, and that the same amount of electricity figured at ten cents per kilowatt hour, meter measurement, would amount to \$2,453.52; that he estimates the total amount of electricity to be furnished during the month of September, 1922, at the rate of thirteen cents per kilowatt hour, meter measurement, to amount to \$3,450.00, and that the same amount of electricity furnished at the rate of ten cents per kilowatt hour, meter measurement, will be \$2,780.00; that he estimates that the amount of electricity to be furnished during the month of October, 1922, at the rate of thirteen cents per kilowatt hour, meter measurement, would amount to \$3,860.00, and that the same amount of electricity at the rate of ten cents per kilowatt hour, meter measurement, would amount to \$3,120.00; that he estimates that the amount of electricity to be furnished during the month of November, 1922, at the rate of thirteen cents per kilowatt hour, meter measurement, would amount to \$4,380.00, and that the same amount of electricity at the rate of ten cents per kilowatt hour, meter measurement, would amount to \$3,508.00; that he estimates that the amount of electricity to be furnished during the month of December, 1922, at the rate of thirteen cents per kilowatt hour, meter measurement, would amount to \$4,900.00, and that the same amount of electricity at the rate of ten cents per kilowatt hour, meter measurement, would amount to \$3,848.00.

Emmons Graham.

Sworn to and subscribed before me this 9th day of September,
A. D. 1922. E. W. Neate, Notary Public, State of Florida.
(N. P. Seal.)

[fol. 47] IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

ORDER REQUIRING ADDITIONAL BOND

This cause coming on to be heard before the undersigned Judge of the Seventeenth Judicial Circuit of the State of Florida, in and for Orange County, the Hon. A. V. Long, Judge of the Eighth Judicial Circuit of the State of Florida for Putnam County, having certified his disqualification, upon the motion of the respondent for an order requiring the complainant in above-entitled cause of action to give additional bond for the better protection of respondent, and it appearing to the satisfaction of the court that due and legal notice of the said motion has been given to counsel for complainant, and evidence having been submitted to the court showing the

necessity for additional bond in said cause, it is considered by the [fol. 48] court that additional bond should be required and that the motion of complainant is reasonable and just and should be granted; it is, therefore,

Ordered, that the complainant, City of Palatka, Florida, furnish a good and sufficient bond in the sum of \$3,500.00 to be approved by the Clerk of the Circuit Court of Putnam County, Florida, on or before Oct. 1, 1922, conditioned to pay to the defendant such costs and damages as it may sustain by the improper issuance of the order of this court dated August 16, 1922, in case the same shall be hereafter vacated, and the bill of complaint dismissed. The said bond being in addition to the bond heretofore filed in said cause in pursuance of the order of August 16, 1922, for the sum of \$2,000.00.

Done and ordered in chambers at Orlando, Florida, this September 12, 1922.

C. O. Andrews, Judge of the Circuit Court for Seventeenth Judicial Circuit of the State of Florida, in and for Orange County, pro Hac Vice Judge of the Eighth Judicial Circuit of the State of Florida for Putnam County, disqualified.

[fol. 49] BOND ON TEMPORARY INJUNCTION FOR \$3,500—Approved and filed Sept. 30, 1922; omitted in printing

[fol. 50] [File endorsement omitted]

[fol. 51] IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

PLEA—Filed Sept. 4, 1922.

The Plea of Southern Utilities Company, a Corporation, Defendant, to the Bill of Complaint of the City of Palatka, a Municipal Corporation, Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in complainant's said bill mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged, does plead thereunto, and for plea says:

That by the certain franchise ordinance, a true copy of which is attached to and made a part of the said bill of complaint herein, the complainant, City of Palatka, undertook to fix a maximum rate for commercial electric lighting to be furnished by the defendant to the inhabitants of the said city of Palatka under said franchise

ordinance; that by the terms of said franchise ordinance the said maximum rate for said commercial electric lighting was to extend over a period of thirty years from the date thereof, to-wit, August 21, 1914; that although the said franchise rate of ten cents per kilowatt was reasonable at the date of said franchise ordinance and so remained for a long time thereafter, the great change in economic conditions brought about by the world war have rendered it impossible for this defendant to manufacture and distribute electric current [fol. 52] rent for commercial electric lighting at said rate of ten cents per kilowatt, meter measurement, as prescribed in said franchise ordinance, and leave to this defendant a reasonable return on its property devoted to said purposes; that this defendant is operating its said property as economically as possible; that said rate of ten cents per kilowatt is unreasonably low; that if compelled to continue to manufacture and distribute electric current for commercial electric lighting at said rate fixed by said franchise ordinance its said property will, in effect, be confiscated and it will be deprived of its said property without due process of law and it will be denied the equal protection of the laws as guaranteed by the Constitution of the United States; that said franchise ordinance, insofar as it purports to prescribe said rate of ten cents per kilowatt, meter measurement, is in conflict with Section 30 of Article XVI of the Constitution of the State of Florida and is void and of no effect; that in order to yield to this defendant a reasonable return upon its property devoted to the manufacture and distribution of electric current as aforesaid it is necessary for this defendant to charge and collect at a rate of not less than thirteen cents per kilowatt, meter measurement, for said commercial electric lighting; that said sum of thirteen cents per kilowatt is a reasonable rate.

All of which matters and things this defendant avers to be true and pleads the same to the whole of said bill of complaint and demands the judgment of this Court whether it ought to be compelled to make any answer to the said bill of complaint, and prays to be hence dismissed with its reasonable costs in this behalf most wrongfully sustained.

Southern Utilities Company, by A. W. Houston, Vice-President. W. B. Crawford, J. T. G. Crawford, Solicitors for Defendant. (Corporate Seal.)

[fol. 53] I hereby certify that in my opinion the foregoing plea is well founded in point of law.

J. T. G. Crawford, Solicitor for Defendant

Jurat showing the foregoing was duly sworn to by A. W. Houston omitted in printing.

[File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

PRÆCIPE SETTING PLEA—Filed Oct. 2, 1922

Comes now the complainant in the above entitled cause and sets [fol. 54] down for argument the plea filed by the defendants in this cause on the rule day in September, A. D. 1922.

Thos. B. Dowda, W. P. Dineen, & J. J. Canon, Solicitors for Complainant.

IN CIRCUIT COURT OF PUTNAM COUNTY

ORDER OVERRULING PLEA

The within plea, having been duly set down for argument, came on this day for hearing before me, and having been argued by counsel and the Court being fully advised in the premises, it is

Ordered that said plea be and it is hereby over ruled as insufficient.

Done and ordered at Jacksonville, Florida, this October 30, 1922.

Daniel A. Simmons, Judge of the Circuit Court for Duval County, Florida, pro Hac Vice-Judge of the Eighth Judicial Circuit of Florida, Disqualified.

[fol. 55] IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

FINAL DECREE—Filed Oct. 30, 1922

This cause coming on this day to be further heard before the undersigned Judge of the Circuit Court for Duval County, Florida (it appearing by the record that the Honorable A. V. Long, Judge of the Circuit Court of the Eighth Judicial Circuit of Florida, is disqualified and has filed his certificate of disqualification), and it appearing to the Court that the defendant herein filed its plea to the bill of complaint herein on September 4, 1922; that said plea was thereafter duly set down for argument, and upon the argument thereof heretofore on this day had, said plea has been overruled and held insufficient, and the said defendant having announced that it elected to abide by the said plea, and the Court being otherwise fully advised in the premises, it is thereupon

Ordered, adjudged and decreed:

1. That the equities in this cause are with the complainant;
2. That the restraining order heretofore granted herein on July 28, 1922, and the temporary injunction heretofore granted herein on August 16, 1922, be and each of them are hereby confirmed and approved;
3. That in accordance with the prayer of the bill of complaint, said temporary restraining order and said temporary injunction be and they are hereby made permanent and said defendant Southern [fol. 56] Utilities Company be and it is permanently enjoined and restrained from collecting from the inhabitants of the City of Palatka and the patrons of said Southern Utilities Company in the City of Palatka more than ten cents per kilowatt hour, meter measurement, for electricity furnished by said defendant for commercial electric lighting, including the lighting of homes;
4. It is further ordered that the defendant pay the costs herein, to be taxed by the clerk.

Done and ordered in Chambers at Jacksonville, Duval County, Florida, this 30th day of October, A. D. 1922.

Dan'l A. Simmons, Judge of the Circuit Court for Duval County, Florida, pro Hac Vice-Judge of the Eighth Judicial Circuit of Florida, Disqualified.

[File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

PETITION FOR APPEAL—Filed Nov. 7, 1922

Comes now Southern Utilities Company a corporation, defendant in the above-entitled cause, and takes and enters its appeal herein [fol. 57] to the Supreme Court of the State of Florida from the final decree herein dated October 30, A. D. 1922, and recorded on October 31, A. D. 1922, in Chancery Order Book 7 at page 474, granting to the complainant herein a permanent injunction as prayed for in the bill of complaint.

And said defendant hereby makes its said appeal returnable to the 18th day of December, A. D. 1922.

The City of Palatka, complainant in this cause, will take notice of the entry of this appeal.

W. B. Crawford, J. T. G. Crawford, Solicitors and of Counsel for the Defendant, Appellant.

Clerk's certificate to foregoing paper omitted in printing.

[File endorsement omitted]

[fol. 58] IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Nov. 7, 1922

Comes now the defendant Southern Utilities Company, a corporation, by its solicitors, and assigns the following errors upon and in pursuance of its appeal to the Supreme Court of the State of Florida entered in the above entitled cause, that is to say:

First. That the Circuit Court erred in making and entering its final decree of October 30, 1922 granting to the complainant City of Palatka a permanent injunction restraining the said defendant from charging for commercial electric lighting at a greater rate than that fixed by the ordinance of said city approved August 21, 1914, purporting to fix a maximum rate over a period of thirty years;

(a) On the ground that the said ordinance is in conflict with Section 30 of Article XVI of the Constitution of the State of Florida.

(b) On the ground that the said maximum rate is confiscatory and the said injunction deprives the defendant of its property without due process of law contrary to the guarantee of the Constitution of the State of Florida.

Second. That the said Circuit Court erred in granting the temporary injunction or restraining order without notice to the defendant.

[fol. 59] Third. That the said Circuit Court erred in denying the defendant's motion to dissolve the said temporary injunction presented to Judge Andrews July 31, 1922;

Fourth. That the said Circuit Court erred in denying the defendant's supplemental motion to dissolve said temporary injunction presented to Judge Simmons on August 12, 1922;

Fifth. That the said Circuit Court erred in overruling the defendant's demurrer to the bill of complaint.

Sixth. That the said Circuit Court erred in overruling the defendant's plea to the bill of complaint.

Seventh. That the said Circuit Court erred in making and entering its final decree of October 30, 1922 granting to the complainant City of Palatka a permanent injunction restraining the said defendant from charging for commercial electric lighting at a greater rate than that fixed by the ordinance of said city approved August 21, 1914, purporting to fix a maximum rate over a period of thirty years.

(a) On the ground that the said maximum rate is confiscatory and the said injunction deprives the defendant of its property with-

out due process of law contrary to the first section of the Fourteenth Amendment to the Constitution of the United States.

(b) On the ground that the said injunction denies to the said defendant the equal protection of the laws contrary to the first section of the Fourteenth Amendment to the Constitution of the United States.

W. B. Crawford, J. T. G. Crawford, Solicitors and of Counsel
for Defendant, Appellant.

Received a copy of the foregoing assignment of errors this 7th day of November, 1922.

Thos. P. Dowda, W. P. Dineen & J. J. Canon, Solicitors and
of Counsel for Complainant, Appellee.

[fol. 60]

[File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY

[Title omitted]

PRECIPE FOR TRANSCRIPT OF THE RECORD—Filed Nov. 7, 1922

To the Clerk of said Court:

You are hereby directed to commence making up the record in the appeal entered herein by Southern Utilities Company, on the 23rd day of November, A. D. 1922, and to include in, copy into and make a part of said record the following papers and proceedings, to-wit:

1. Copy the bill of complaint with its accompanying exhibits filed July 27, 1922;

2. Recite that on July 27, 1922, subpœna in chancery was duly issued directed to the defendant;

3. Recite that on July 28, 1922 said subpœna was duly served upon the defendant and that thereafter the defendant filed its appearance;

4. Copy certificate of disqualification of Hon. A. V. Long filed July 28, 1922;

5. Copy order for temporary injunction made by Honorable Daniel A. Simmons July 28, 1922, and sheriff's return of service thereof;

[fol. 61] 6. Copy the injunction bond filed by the complainant on July 29, 1922;

7. Copy the temporary injunction with proof of services thereof issued July 29, 1922;

8. Copy the motion of the defendant filed July 31, 1922 to dissolve the temporary injunction;

9. Copy the affidavit of A. W. Houston, filed by the defendant July 31, 1922;

10. Copy order on motion to dissolve the temporary injunction made by Honorable Charles O. Andrews July 31, 1922;

11. Copy the additional bond filed by the complainant August 2, 1922;

12. Copy the supplemental motion to dissolve the temporary injunction filed by the defendant August 1, 1922;

13. Copy the demurrer filed by the defendant to the bill of complaint on August 1, 1922;

14. Copy the affidavit of J. E. Johnson filed by the complainant on August 12, 1922;

15. Copy the affidavit of George Veliasish filed by the complainant August 12, 1922;

16. Copy the order of Judge Simmons made August 16, 1922, on the supplemental motion to dissolve the temporary injunction and demurrer to the bill of complaint;

17. Copy bond filed by the complainant August 18, 1922, in obedience to Order of August 16, 1922;

18. Copy motion filed by the defendant to require the complainant to file additional bond September 12, 1922;

19. Copy affidavit filed by defendant made by Emmons Graham, September 12, 1922;

20. Copy order made by Judge Andrews September 12, 1922 on motion for additional bond;

21. Copy additional bond filed September 30, 1922, required by order of September 12, 1922;

22. Copy plea of the defendant to the bill of complaint filed September 4, 1922;

23. Copy praecipe setting down plea for argument filed by complainant October 2, 1922;

24. Copy order made by Judge Simmons upon defendant's plea made October 30, 1922;

25. Copy final decree made by Judge Simmons on October 30, 1922;

[fol. 62] 26. Copy entry of appeal and notice thereof together with certificate of recordation filed November 7th, 1922;

27. Copy assignment of errors with proof of service upon complainant's solicitors filed by defendant on November 7th, 1922;

28. Copy the directions for making up transcript of record filed by the defendant on November 7th 1922;

29. Certify the correctness of said transcript.

30. Omit all other papers and proceedings.

W. B. Crawford, J. T. G. Crawford, Solicitors and of Counsel
for Defendant, Appellant.

Received a copy of the foregoing directions this 7th day of November 1922.

Thos. B. Dowda, W. P. Dineen, & J. J. Canon, Solicitors and
Counsel for Complainant.

[fol. 63] IN CIRCUIT COURT OF PUTNAM COUNTY

CLERK'S CERTIFICATE

I, R. J. Hancock, Clerk of the Circuit Court in and for the County of Putnam, State of Florida, do hereby certify that the foregoing pages numbered One (1) to Sixty-three (63) inclusive, contain a correct transcript of record of the judgment and decree in the case of City of Palatka, complainant, against Southern Utilities Company, a corporation, defendant, and a true and correct recital and copy of all such papers and proceedings in said cause, as appear from the records and files in my office, that have been directed to be included in said transcript by the written demands of the parties.

In witness whereof I have hereunto set my hand and affixed the seal of said Circuit Court this fifth day of December, A. D. 1922.

R. J. Hancock, Clerk Circuit Court, Putnam County, Florida,
by W. A. Williams, Jr., Deputy Clerk. (Seal of the Circuit Court.)

[fol. 64] [File endorsement omitted]

IN THE SUPREME COURT OF FLORIDA, JUNE TERM 1923, DIVISION B

SOUTHERN UTILITIES COMPANY, a Corporation, Appellant,

v.

CITY OF PALATKA, a Municipal Corporation, Appellee

Putnam County

OPINION—Filed Dec. 21, 1923

WHITFIELD, P. J.:

The bill of complaint herein brought by the city, in effect alleges that in 1914 the city by ordinance made a contract, by which the city granted to the predecessors of the utility company "and its successors and assigns, the right and privilege to construct, own, operate and maintain in the City of Palatka, Florida, a plant or plants for the manufacture, sale and distribution of electricity, gas and other illuminants or products for light, power and fuel; and to lay mains, pipes and fixtures under the streets, lanes, alleys, sidewalks and bridges of said city for the distribution of gas, and to erect poles, lamp posts, wires and appliances for the transmission of electricity and power, under, through, over and across the said streets, lanes, alleys, sidewalks and bridges of said city for a period of thirty years from said date; that as a consideration for the granting of such right and privilege by said City of Palatka to said Palatka Gas Light & Fuel Company and its successors and assigns, said

[fol. 65] Palatka Gas Light & Fuel Company covenanted and agreed with said City of Palatka as an incident to said grant referred to in paragraph three thereof, that the rates to be charged in the City of Palatka for commercial electric lighting should not be more than ten cents per kilowatt, meter measurement, for the first ten years, and not more than nine cents per kilowatt thereafter, meters to be furnished and kept in repair by the grantees at its own expense, and the minimum charge should not be more than one dollar and fifty cents per month; that said Palatka Gas Light & Fuel Company accepted said ordinance or grant, and all the covenants and conditions therein contained, in its entirety, by instrument in writing, and by constructing, owning, operating and maintaining in said City of Palatka a plant or plants for the manufacture, sale and distribution of electricity, gas and other illuminants or product for light, power and fuel, and erecting poles, lamp posts, wires and appliances for the transmission of electricity and power, under, through, over and across the said streets, lanes, alleys, sidewalks and bridges of said City of Palatka; that on the 1st day of January, A. D. 1917, the Palatka Gas Light & Fuel Company, a corporation as aforesaid, then enjoying the rights and privileges granted by said City of Palatka, and accepted by it, and operating and carrying on the business contemplated by said grant, assigned and transferred the rights and privileges so granted to it by said City of Palatka, as aforesaid, to the Palatka Public Service Company, a corporation under the laws of the State of Florida, with principal place of business in the City of Palatka, Putnam County, Florida; that on the 1st day of November, A. D. 1917, the Palatka Public Service Company, a corporation, as aforesaid, then enjoying the rights and privileges granted by said City of Palatka to and accepted by said Palatka Gas Light & Fuel Company, and assigned and transferred to it by said Palatka Gas Light & Fuel Company, and operating and carrying on the business contemplated by said grant and assignment thereof, transferred and assigned said rights and privileges granted and assigned to it as aforesaid to the Southern Utilities Company, [fol. 66] a corporation, as aforesaid, defendant; that said defendant, under said assignment from Palatka Public Service Company, a corporation, as aforesaid, to it, accepted said ordinance or grant, and all the conditions, covenants and agreements therein contained, in its entirety, and under said ordinance or grant as assigned to it, has constructed, owned, operated and maintained in the City of Palatka, Florida, a plant for the manufacture, sale and distribution of electricity, and has erected poles, lamp posts, wires and other appliances for the transmission of electricity and power, under, through, over and across the streets, lanes, alleys, sidewalks and bridges of said city, and has manufactured, sold and distributed electricity in said City of Palatka from the 1st day of November, A. D. 1917, until the present time, to the City of Palatka for lighting the streets, public places and public buildings of said city, and furnished electricity for light and power to the inhabitants of said city who desire to procure the same, and who paid therefor at the

rate charged by said defendant, and enjoyed and exercised all the rights and privileges granted by and incident to said ordinance, and continues to enjoy and exercise all said rights and privileges at this time; that notwithstanding the conditions and covenants contained in said ordinance, and the duty of said defendant to furnish the City of Palatka and the inhabitants thereof electricity for lighting and power under the terms of said ordinance, the defendant has refused and neglected, and still refuses and neglects to comply with the conditions and covenants in said ordinance contained, and has charged and collected each month from the inhabitants of said City of Palatka and patrons of said defendant in said City of Palatka, and continues to charge and collect each month from the inhabitants of said City of Palatka and patrons of said defendant in said City of Palatka, for commercial electric lighting, thirteen cents per kilowatt, meter measurement, and a minimum charge of one dollar and fifty cents per month; and complainant says that it has protested to said defendant against such charge in excess of the rate prescribed [fol. 67] in said ordinance as incident to the grant of the rights and privileges therein and thereby granted, and repeatedly notified and requested said defendant to comply with the covenants and conditions of said ordinance, and defendant has refused, and still refuses and neglects so to do, persisting in violating the same, and defying the complainant in its efforts to obtain a compliance therewith."

It is prayed that the "Southern Utilities Company, a corporation, defendant, may be restrained and enjoined by decree of this court from charging and collecting from the inhabitants of said City of Palatka and patrons of said defendant in the City of Palatka, said rate of thirteen cents per kilowatt, meter measurement, for commercial electric lighting, or any rate for such commercial electric lighting in the City of Palatka in excess of the rate set out as incident to the grant of the rights and privileges contained in said ordinance, to-wit: the rate of ten cents per kilowatt, meter measurement, that a temporary injunction or restraining order be issued, without notice, out of this Honorable Court, of like character, directed to the defendant and upon final hearing, said temporary injunction be made permanent, and for such other and further relief in the premises as equity may require and to this court may seem meet and proper."

A temporary restraining order was granted. Motions to dissolve the restraining order or temporary injunction were denied, appropriate bonds being required.

A demurrer to the bill of complaint was overruled.

The following plea was overruled: "That by the certain franchise ordinance, a true copy of which is attached to and made a part of the said bill of complaint herein, the complainant, City of Palatka, undertook to fix a minimum rate for commercial electric lighting to be furnished by the defendant to the inhabitants of the said City of Palatka under said franchise ordinance; that by the terms of said franchise ordinance the said maximum rate for said commercial

electric lighting was to extend over a period of thirty years from the date thereof, to-wit, August 21, 1914; that although the said franchise rate of ten cents per kilowatt was reasonable at the date of [fol. 68] said franchise ordinance, and so remained for a long time thereafter, the great change in economic conditions brought about by the world war have rendered it impossible for this defendant to manufacture and distribute electric current for commercial electric lighting at said rate of ten cents per kilowatt, meter measurement, as prescribed in said franchise ordinance, and leave to this defendant a reasonable return on its property devoted to said purposes; that this defendant is operating its said property as economically as possible; that said rate of ten cents per kilowatt is unreasonably low; that if compelled to continue to manufacture and distribute electric current for commercial electric lighting at said rate fixed by said franchise ordinance, its said property will, in effect, be confiscated, and it will be deprived of its said property without due process of law, and it will be denied the equal protection of the laws as guaranteed by the constitution of the United States; that said franchise ordinance, insofar as it purports to prescribe said rate of ten cents per kilowatt, meter measurement, is in conflict with Section 30 of Article XVI of the constitution of the State of Florida and is void and of no effect; that in order to yield to this defendant a reasonable return upon its property devoted to the manufacture and distribution of electric current, as aforesaid, it is necessary for this defendant to charge and collect at a rate of not less than thirteen cents per kilowatt, meter measurement, for said commercial electric lighting; that said sum of thirteen cents per kilowatt is a reasonable rate."

The final decree "ordered, adjudged and decreed:

"1. That the equities in this cause are with the complainant;

"2. That the restraining order heretofore granted herein on July 28, 1922, and the temporary injunction heretofore granted herein on August 16, 1922, be and each of them are hereby confirmed and approved;

"3. That in accordance with the prayer of the bill of complaint, said temporary restraining order and said temporary injunction be [fol. 69] and they are hereby made permanent and said defendant, Southern Utilities Company, be and it is permanently enjoined and restrained from collecting from the inhabitants of the City of Palatka and the patrons of said Southern Utilities Company in the City of Palatka more than ten cents per kilowatt hour, meter measurement, for electricity furnished by said defendant for commercial electric lighting, including the lighting of homes."

An appeal from the final decree was taken by the defendant company.

In brief, the contention of the utility company, appellant, is that under Section 30, Article XVI, of the Florida Constitution, the city could not enter into a binding contract fixing rates for electricity furnished the city or its inhabitants, and cites as authorities, City of

Tampa v. Tampa Water Works Co., 45 Fla. 600, 34 South. Rep. 631; Tampa Water Works Co. v. Tampa, 199 U. S. 241, 26 Sup. Ct. Rep. 23; Muscatine Lighting Co. v. Muscatine, 255 U. S. 539, 65 L. Ed. 764, 41 Sup. Ct. Rep. 400; San Antonio v. San Antonio Public Service Co., 255 U. S. 547, 65 L. Ed. 777, 41 Sup. Ct. Rep. 428. The appellant also contends that the municipality had no legislative authority to enter into the contract in controversy fixing rates for individual consumers of electricity.

Section 8, Article VIII, of the State Constitution provides that: "The legislature shall have power to establish and to abolish municipalities, to provide for their government, to prescribe their jurisdiction and powers, and to alter or amend the same at any time."

Under this organic provision the legislature may by law authorize a municipality to make a contract for rates to be charged by public service corporations for service rendered to the municipality or its inhabitants, and such a contract when duly authorized and entered into will be binding on the parties thereto, but the contract will be subject to the power of the legislature under Section 30, Article XVI, of the Constitution to pass laws providing for regulating rates for "services of a public nature." *City of Tampa v. Tampa Water [fol. 70] Works Co.*, 45 Fla. 600, 34 South. Rep. 631; *Tampa Water Works Co. v. Tampa*, 199 U. S. 241, 26 Sup. Ct. Rep. 23; *State ex rel. Triay v. Burr*, 79 Fla. 290, 84 South. Rep. 61; *State ex rel. Ellis v. Tampa Water Works Co.*, 57 Fla. 533, 48 South. Rep. 639; *Town of Brooksville v. Florida Tel. Co.*, 81 Fla. 436, 88 South. Rep. 307; *State ex rel. Attorney General v. Atlantic Coast Line Ry.*, 52 Fla. 646, 51 South. Rep. 705.

Section 30, Article XVI, of the Florida Constitution, is as follows: "The legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature; and shall provide for enforcing such laws by adequate penalties or forfeitures." In construing this organic provision, this court has said: "The power mentioned in this section is full power; a continuing, ever-present power. Being irrevocably vested by this section, the legislature cannot divest itself of it. Neither can it bind itself by contract, nor authorize a municipality—one of its creatures—to bind it by contract, so as to preclude the exercise of this power whenever in its judgment the public exigencies demand its exercise. Full power cannot exist, if by contract that power can be curtailed or impaired. Without this section this power to regulate rates would exist under the general grant of legislative power in Section 1, Article III, but such power could be surrendered by a contract made by the State or by a municipality by its authority. With this section in force, the power to surrender by contract the right to regulate rates is taken away, for the authority to surrender can not co-exist with the ever-present, continuing power to regulate, which is declared by this section to exist in the legislature. The section in question does not operate to prevent the legislature from making contracts itself, nor from authorizing munic-

ipalities to make them, and in and by such contracts stipulating for certain rates which will be valid and binding obligations so long as the legislature does not exercise or authorize municipalities [fol. 71] to exercise the power to prevent excessive charges which is declared by the section to be vested in the legislature. But every charter granted and every contract made by the legislature, or by a municipality under its authority, are accepted and made subject to and in contemplation of the possibility of the subsequent exercise of the power to prevent excessive charges, which by this section is unalterably and irrevocably vested in the legislature. The section not only becomes a part of every such contract, as much so as if written therein, but by implication it denies the authority of the legislature to bind itself either by a contract of its own making, or one made by a municipality under its authorization, not to exercise the power thereby recognized whenever in its wisdom it should think necessary so to do." *City of Tampa v. Tampa Water Works Co.*, 45 Fla. 600, 34 South. Rep. 631.

There is nothing in the laws of the State that confers upon the city a power to regulate rates to be paid for electricity furnished in the city. Section 1932, Revised General Statutes, 19 applies to service rendered by plants operated by the city. See Chapter 4500, Acts of 1897.

"Contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to defeat the legitimate government authority." *Knox v. Lee*, 12 Wall. (U. S.), 457, text 550, 551; *Union Dry Goods Co. v. Georgia Public Service Corporation*, 248 U. S. 372, text 376, 39 Sup. Ct. Rep. 117.

"There is no absolute freedom to do as one wills or to contract as one chooses. The guarantee of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." *Chicago, B. & Q. R. Co. v. McGuire*, 219 U. S. 549, text 537, 31 Sup. Ct. Rep. 259.

The duty of an owner of private property used for the public [fol. 72] service to charge only a reasonable rate, and thus respect the authority of government to regulate in the public interest, and of government to regulate by fixing such a reasonable rate as will safeguard the rights of private ownership, are interdependent and reciprocal. Where, however, the right to contract exists and the parties, the public on the one hand and the private on the other, do so contract, the law of the contract governs both the duty of the private owner and the governmental power to regulate. *San Antonio v. San Antonio Public Service Co.*, 255 U. S. 547, text 556, 65 L. Ed. 777, 41 Sup. Ct. Rep. 428.

Municipal contracts for the rendering of public service will be sustained where the power is given to make the contract, and the terms of it taken with the law controlling them are not clearly

violative of some provision or principle of law. *State ex rel. Ellis v. Tampa Water Works Co.*, 56 Fla. 858, 47 South. Rep. 358.

In the *Tampa Water Works* cases the distinct holding is not that because of Section 30, Article XVI, of the State Constitution the city could not, even with legislative authority, make a valid contract fixing service rates with a public utility company operating within the city; but that such contracts when duly made are subject to laws passed by the legislature under Section 30, Article XVI, of the Constitution. See *State ex rel. Triay v. Burr*, 79 Fla. 290, 84 South. Rep. 61; *State ex rel. Swearingen v. Railroad Commission of Florida*, 79 Fla. 526, 84 South. Rep. 444; *State ex rel. Ellis v. Tampa Water Works Co.*, 57 Fla. 533, 48 South. Rep. 639; *State ex rel. Ellis v. Tampa Water Works Co.*, 56 Fla. 858, 47 South. Rep. 358; *State ex rel. Attorney General v. Atlantic Coast Line Ry.*, 52 Fla. 646, 41 South. Rep. 705; *Town of Brooksville v. Florida Telephone Co.*, 81 Fla. 436, 88 South. Rep. 307; 20 C. J. 330; *Union Dry Goods Co. v. George Public Service Corporation*, 248 U. S. 372, 39 Sup. Ct. Rep. 117; *Union Dry Goods Co. v. Georgia Public Service Corp.*, 142 Ga. 841, 83 S. E. Rep. 946; *Penney & Boyle Co. v. Los Angeles Gas & Electric Corp.*, 138 Cal. 12, 141 Pac. Rep. 620, L. R. A. 1915C 282, Ann. Cas. 1915D 471; *Village [fol. 73] of Kilbourn City v. Southern Wisconsin Power Co.*, 149 Wis. 168, 135 N. W. Rep. 499; *City of Scranton v. Public Service Commission*, 268 Pa. 192, 110 Atl. Rep. 775; *Woodburn v. Public Service Commission*, 82 Ore. 114, 161 Pac. Rep. 391; *State ex rel. City of Billings v. Billings Gas Co.*, 55 Mont. 102, 173 Pac. Rep. 799; *People ex rel. Village of South Glens Falls v. Public Service Commission*, 225 N. Y. 216, 121 N. E. Rep. 777; *City of Sapulpa v. Oklahoma Natural Gas Co.*, 79 Okla. 196, 192 Pac. Rep. 224; *Knoxville Gas Co. v. City of Knoxville*, 231 Fed. Rep. 283; *Salt Lake City v. Utah Light & Traction Co.*, 52 Utah 210, 173 Pac. Rep. 556, P. U. R. 1918F 377, 3 A. L. R. 715, and Notes; *Woodburn v. Public Service Commission*, 82 Ore. 114, 161 Pac. Rep. 391 Ann. Cas. 1917E 996; *Puget Sound Traction, Light & Power Co. v. Reynolds*, 244 U. S. 574, 37 Sup. Ct. Rep. 705.

In *Southern Iowa Electric Co. v. Chariton*, 255 U. S. 539, 65 L. Ed. 764, 41 Sup. Ct. Rep. 400, the laws of the State conferred upon the city "the continuing power to regulate rates and forbid any abridgement of the power by ordinance, resolution or contract." It was held that under these State laws the city was not authorized to make a contract fixing rates for a term of years, therefore the contract, lacking in mutuality, was void, and reasonable rates could be demanded. In *City of New Orleans v. O'Keefe*, 280 Fed. Rep. 92, where the constitution of Louisiana provided that "the exercise of the police power of the State shall never be abridged," it was held the city could not make a binding contract for rates. *State v. City of New Orleans*, 151 La. 24, 91 South. Rep. 533.

In *San Antonio v. San Antonio Public Service Co.*, 255 U. S. 547, 65 L. Ed. 777, 41 Sup. Ct. Rep. 428, the city "was vested with the rate regulating power and forbidden to restrict it by contract." There being no valid contract, a reasonable rate was proper.

See *Houston v. Southwestern Bell Telephone Co.*, 259 U. S. 318, 66 L. Ed. 961, 42 Sup. Ct. Rep. 486. See also *City and County of Denver v. Stenger*, 277 Fed. Rep. 865; *City of Lead v. Western Gas & Fuel Co.*, 44 S. Dak. 510, 184 N. W. Rep. 244; *O'Keefe v. [fol. 74] City of New Orleans*, 273 Fed. Rep. 560; *City of New Orleans v. O'Keefe*, 280 Fed. Rep. 92; *Opelika Sewer Co. v. City of Opelika*, 280 Fed. Rep. 155.

In *Southern Iowa Electric Co. v. Chariton*, 255 U. S. 539, text 541-2, 41 Sup. Ct. Rep. 400, it is said: "Two propositions are indisputable: (a) That although the governmental agencies having authority to deal with the subject may fix and enforce reasonable rates to be paid public utility corporations for the services by them rendered, that power does not include the right to fix rates which are so low as to be confiscatory of the property of such corporations, *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362; *Smyth v. Ames*, 169 U. S. 463; *San Diego Land & Town Co. v. Jasper*, 189 U. S. 439, 442; *Knoxville v. Knoxville Water Co.* 212 U. S. 1, 17; *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, 41; *Minnesota Rate Cases*, 230 U. S. 352, 434; *Cedar Rapids Gas Light Co. v. Cedar Rapids*, 223 U. S. 655; *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153; *Denver v. Denver Union Water Co.*, 246 U. S. 178, 194; and (b) that where, however, the public service corporations and the governmental agencies dealing with them have power to contract as to rates, and exert that power by fixing by contract rates to govern during a particular time, the enforcement of such rates is controlled by the obligation resulting from the contract, and therefore the question of whether such rates are confiscatory becomes immaterial. *Freeport Water Co. v. Freeport*, 180 U. S. 587, 593; *Detroit v. Detroit Citizens' Street Ry. Co.*, 184 U. S. 368; *Knoxville Water Co. v. Knoxville*, 189 U. S. 434, 437; *Cleveland v. Cleveland City Ry. Co.*, 194 U. S. 517; *Home Telephone Co. v. Los Angeles*, 211 U. S. 265, 273; *Minneapolis v. Minneapolis Street Ry. Co.*, 215 U. S. 417; *Columbus Railway, Power & Light Co. v. Columbus*, 249 U. S. 399."

While Section 8, Article VIII of the Constitution expressly authorizes the legislature to prescribe the jurisdiction and powers of municipalities, yet any authority given a city by the legislature to make contracts for public service rates is subject to the organic provision that "the legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and [fol. 75] excessive charges by persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature." Sec. 30, Art. XVI, Constitution.

There is, in this State, no provision of controlling law, expressly forbidding irrevocable contracts or other abridgments of the police power as is prescribed in the States of Iowa, Texas, Louisiana and other States, as shown by the authorities above cited (*City and County of Denver v. Stenger*, 277 Fed. Rep. 865, text 871). The above quoted Section 30 of Article XVI does not forbid the legislature to authorize the cities of the State to enter into term contracts for service rates with public utility corporations; but the quoted

organic provision merely makes such contracts that are otherwise valid and binding, subject to the "full power" of the legislature to provide for fixing just and reasonable rates in the premises. This is the decision in *City of Tampa v. Tampa Water Works Co.*, 45 Fla. 600, 34 South. Rep. 631; *Tampa Water Works Co. v. Tampa*, 199 U. S. 241, 26 Sup. Ct. Rep. 23; *State ex rel. Triay v. Burr*, 79 Fla. 290, 84 South. Rep. 61 and other similar cases above cited. *Town of Brooksville v. Florida Tel. Co.*, 81 Fla. 436, 88 South. Rep. 307. In *City of Wagoner v. South Dakota Light & Power Co.*,— S. D.—, 193 N. W. Rep. 129, the city had authority to regulate rates, therefore it was the duty of the city to prescribe reasonable rates and it could not enforce confiscatory rates. See also *City and County of Denver v. Stenger*, 277 Fed. Rep. 865.

The appellant contends that as Section 30, Article XVI, of the Constitution provides that "the legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons and corporations engaged" in performing "services of a public nature," which organic provision makes all contracts for rendering public services subject to the power of the legislature to regulate the rates to be charged for such service, therefore neither the legislature nor a municipality can have the power to make a binding contract for such [fol. 76] public service rates. But the constitution does not expressly forbid irrevocable contracts or other abridgments of the police power, as in Louisiana and other States. If the constitution of Florida did so provide, there might be a basis for argument that municipalities in this State cannot make binding rate contracts with public utility companies. The power to pass laws to regulate rates is invested in the legislature, which power may be exercised through a municipality; and conceding that the power to regulate rates excludes the power to contract for continuing rates, such power to regulate the rates here involved has not been given the city; and the power of a city to make binding contracts in the premises until the city has been authorized to regulate the rates has been held in the *City of Tampa v. Tampa Water Works Co.*, 45 Fla. 600, 34 South. Rep. 631.

As under Section 8, Art. VIII, of the Constitution, the legislature may prescribe the jurisdiction and powers of municipalities, and as the constitution and statutes of the State do not make it unlawful for municipalities to enter into contracts for public service rates, it must be determined whether the legislature had by charter authority or other statute vested the City of Palatka with power to enter into the asserted contract here sought to be enforced. If no such authority has been given, the alleged contract is without force or efficacy.

Municipalities are established by law for the purposes of government. Their functions are performed through appropriate officers and agents, and they can exercise only such powers as are legally conferred by express provisions of law, or such as are, by fair implication and intendment, properly incident to or included in the

powers expressly conferred for the purpose of carrying out and accomplishing the object of the municipality. Powers that are indispensable to the declared objects and purposes of a municipality may be inferred or implied from powers expressly given that are fairly subject to such construction. The difficulty of making specific enumeration of all such powers as the legislature may intend to municipal corporations renders it necessary to confer some power [fol. 77] in general terms. The general powers given are intended to confer other powers than those specifically enumerated. General powers given to a municipality should be interpreted and construed with reference to the purposes of the corporation. Where particular powers are expressly conferred and there is also a general grant of power, such general grant by intendment includes all powers that are fairly within the terms of the grant and are essential to the purposes of the municipality, and not in conflict with the particular powers expressly conferred. The law does not expressly grant powers and impliedly grant others in conflict therewith. If reasonable doubt exists as to a particular power of a municipality, it should be resolved against the city; but where the particular power is clearly conferred or is fairly included in or inferable from other powers expressly conferred, and is consistent with the purposes of the municipality and the powers expressly conferred, the exercise of the power should be resolved in favor of the city so as to enable it to perform its proper functions of government.

Among the usual functions of a municipal government are those of granting privileges in the use of its streets for the purpose of rendering service of a public nature, such as furnishing the municipality and its inhabitants service necessary or useful for the common welfare of all. The furnishing of water for use and for fire protection is a service necessary or useful for the individual and collective well-being of a city and its inhabitants. Authority to make provisions within lawful limitations for securing or furnishing to a city and its inhabitants an abundant supply of good water for all purposes, is a usual and necessary power of a municipality, and such power may be included in powers given in general terms, where there is nothing in the enumeration of particular powers conferred to limit in this particular the operation of the general powers conferred. *Porter v. Vinzant*, 49 Fla. 213, 38 South. Rep. 607; *Mernaugh v. City of Orlando*, 41 Fla. 433, 27 South. Rep. 34.

Unless expressly or impliedly restrained by statute, a municipal [fol. 78] corporation has a discretion in the choice of means and methods for exercising the powers given to it for governmental or public purposes, and the usual limitations upon the actions of municipalities within their legal powers are good faith and reasonableness, not wisdom or perfection. *Jacksonville Electric Co. v. City of Jacksonville*, 36, Fla. 229, text 271, 18 South. Rep. 677.

Where action is taken by a municipality in the exercise of its powers, the methods used will not be controlled by the courts where there is no abuse of power or discretion. All doubts as to the propriety of means used in the exercise of an undoubted municipal

power will be resolved in favor of the municipality. State ex rel. Ellis v. Tampa Water Works Co., 56 Fla. 858, 47 South. Rep. 358.

The general charter powers of a municipality usually relate to governmental functions as distinguished from business powers; and such general powers are designed to confer authority that is not expressly or specifically conferred and is essential or expedient to accomplish the purposes for which the municipality is organized. Where the exercise of particular governmental powers may be fairly included in and authorized by general powers conferred upon municipalities, the rule *expressio unius est exclusio alterius*, is not generally applied to specific powers conferred to exclude powers that serve the purposes for which municipalities are organized, where such powers are not inconsistent with other powers conferred or with limitations imposed by the charter or by statute upon the municipal powers. When a municipality undertakes to exercise powers of a business nature, as distinguished from governmental functions, the authority for such exercise should clearly appear by express provisions or by reasonably certain implication from other powers conferred, and should be in entire consonance with the purposes for which the municipality was created. In determining whether a particular business power may be implied from express powers conferred, the rule, *expressio unius est exclusio alterius*, as other rules of interpretation, may in proper cases be applied to effectuate the legislative intent in conferring municipal powers.

It appears that the municipality had statutory authority to "pass ordinances that may be necessary and expedient for the good government of said town, and for the preservation of the public peace, health, and morals: Provided, however, they are not inconsistent with the Laws or Constitution of this State or the United States; they shall especially have power to regulate, alter, and improve and extend the streets, lanes and avenues of said town, or to lay out and establish and open new streets, and to cause obstructions and encroachments to be removed * * * and to do and perform all such other act or acts as shall seem necessary and best adapted to the general interests of said town." (Sec. 11, Chap. 492, Acts 1852), "to provide for the lighting of streets of the city or town" (Sec. 1041, Gen. Stats. 1906, Sec. 1868, Rev. Gen. Stats. 1920), "to regulate, improve, alter, extend and open streets, lanes and avenues" (Sec. 1915, Gen. Stats. 1906, Sec. 1843, Rev. Gen. Stats. 1920).

Ordinance contracts for supplying the city and its inhabitants with lights, is a usual and necessary function of a municipality, and authority to make such contracts may be included in powers given in general terms, where such power is not in conflict with specific powers conferred. See State ex rel. Ellis v. Tampa Water Works Co., 56 Fla. 858, 47 South. Rep. 358.

The above quoted general statutory powers of the city are sufficient to confer upon the city authority to make a franchise contract with provisions as to rates to be charged individuals for electric lights of the character of the one in controversy; such contract is

consistent with the express power "to provide for the lighting of streets of the city," and is not repugnant to or inconsistent with any specific or general statutory power of the city. See *City of Tampa v. Tampa Water Works Co.*, 45 Fla. 600, 34 South. Rep. 631; *State ex rel. Ellis v. Tampa Water Works Co.*, 56 Fla. 858, 47 South. Rep. 358. The contract does not grant exclusive franchise privileges. *Capital City Light & Fuel Co. v. City of Tallahassee*, 42 [fol. 80] Fla. 462, 28 South. Rep. 810; *Capital City Light & Fuel Co. v. Tallahassee*, 186 U. S. 401, 22 Sup. Ct. Rep. 866.

In *Hyatt v. Williams*, 148 Cal. 585, 84 Pac. Rep. 41, the specific charter powers were "to provide for and regulate lighting streets, avenues and public places and to provide for such lights as are necessary for the convenient transaction of public business," and it was held that the terms of the express grant of power to provide lighting for the public purposes named do not indicate any intention to give the distinct and larger power to establish a plant (involving taxation), for furnishing lighting for private use to all the inhabitants of the city who may desire it. See also *Christensen v. City of Fremont*, 45 Neb. 160, 63 N. W. Rep. 364; *Village of Ladd v. Jones*, 61 Ill. App. 584.

Erecting or establishing or procuring and operating a public utility plant may be a corporate or business function, while contracting, in connection with a franchise grant to a public service corporation, for service of a public nature to its inhabitants, may be a governmental power of a municipality.

Authority to make the contract for rates in this case is afforded by the general provisions conferred upon the city. Such authority is not inconsistent with special powers given the city, and is not in derogation of any State law or rule of public policy in this State.

There being a contract fixing rates for electricity to be furnished by the utility company, and the legislature not having authorized the city or any other governing body to regulate such rates the question as to whether the contract rates are remunerative, is immaterial, and the contract controls until the legislature does act in the premises. *Columbus Ry. Power & Light Co. v. City of Columbus, Ohio*, 249 U. S. 399, 63 L. Ed. 669, 39 Sup. Ct. Rep. 349, P. U. R. 239, 6 L. R. A. 1648; *City of Cleveland v. Cleveland City R. Co.*, 194 U. S. 517, 24 Sup. Ct. Rep. 756; *Lenawee County Gas & Electric Co. v. City of Adrian*, 209 Mich. 52, 176 N. W. Rep. 590, 10 A. L. R. 1328; *Miami Gas Co. v. Highblyman*, 77 Fla. 523, 81 South. Rep. 775, and other authorities above cited; see also *City* [fol. 81] of *Moorhead v. Union Light, Heat & Power Co.*, 255 Fed. Rep. 920; *Hillsdale Gaslight Co. v. City of Hillsdale*, 258 Fed. Rep. 485; *Knoxville Gas Co. v. City of Knoxville*, 253 Fed. Rep. 217.

Affirmed.

West and Terrell, JJ., concur.

Taylor, C. J., and Ellis and Browne, JJ., concur in the opinion.

[File endorsement omitted]

IN SUPREME COURT OF FLORIDA

[Title omitted]

PETITION FOR REHEARING AND ORDER OVERRULING SAME—Filed
Jan. 14, 1924

Southern Utilities Company, a corporation, respectfully petitions the Court for a rehearing of the above entitled cause, and assigns as grounds therefor the following:

1. In its opinion filed in said cause the Court holds that the municipality was authorized by the legislature to make the contract fixing maximum rates to be charged and paid for electric current furnished to the municipality or to its inhabitants. In previous decisions, referred to and approved in said opinion, this Court has held that the impairment clauses of the State and Federal Constitution (Sec. 12, Decl. Rights, and Sec. 10, Art. 1, cl. 1, respectively), do not apply to such a contract because of the existence of the continuing power in the legislature conferred by Section 30 of Article XVI, of the Florida Constitution. This case is distinguished from the decisions referred to upon the solitary fact that the said legislative power has not been exercised in the case of the particular municipality with respect to electric current. To emphasize, we repeat, with great respect, that this case differs no whit from those in which decreases or increases of franchise rates have been justified and sanctioned by this Court, except that in those cases the legislature had delegated to a city council or to the Railroad Commission its power under said last mentioned section of the Constitution to change such rates. If these statements are correct, and it must be true that they are, then it is demonstrated beyond any possible question, that the test this Court has, inadvertently, we think, committed itself to for ascertaining the enforceability of franchise rates is the exercise instead of the existence of the particular power. By that test which, presumably, will remain in force indefinitely, municipalities are as effectively bound to rates unreasonably high as are the utility companies to rates unreasonably low. Such a test, we most respectfully submit, is susceptible of well known and judicially recognized abuses, and widely opens the door for the practice of the very evils which lie at the foundation of the now universal principle that governments are powerless to contract or barter away their governmental powers. It is patent from a reading of the opinion that such an effect was not in the contemplation of the Court and was not given consideration, and that fact, in the light of the very great public concern in the question involved, it seems to your petitioner, calls for a full rehearing and reconsideration.

2. The Court, in its opinion, has apparently overlooked the outstanding and undeniable fact that Section 30 of Article XVI of the

Florida Constitution, or the continuing power to decrease rates charged for public services vested in and to be exercised by the [fol. 83] legislature independently of that section, is of no greater force or efficacy than other protective provisions of the Constitution. It is not to be questioned that the Courts "shall be open, so that every person for any injury done him in his lands, goods, person or reputation shall have remedy, by due course of law, and right and justice shall be administered without sale, denial or delay" (Fla. Const., Dec. Rights, Sec. 4), or that "No person shall * * * be deprived of * * * property without due process of law; nor shall private property be taken without just compensation" (Id. Sec. 12), or that the legislature is powerless to pass "any law impairing the obligation of contracts" (Id. Sec. 17). In giving full effect to a so-called contract fixing a maximum rate to be charged and paid for electric current furnished to a municipality or to its inhabitants, and at the same time and by the same opinion, preserving the power in the legislature to impair whatever obligation is represented by the so-called contract, the court, it is most respectfully submitted, has overlooked the other mentioned protective clauses of the Florida Constitution and similar provisions of the Federal Constitution. Stated differently, if the contract is not protected from impairment by the legislature, as the Court has distinctly held and reiterated, then by the same token and for the same reason and by virtue of another provision of the same organic and fundamental law, the property of the appellant should not be taken, as is admittedly being done, without just compensation. We submit that if the Court did not, as it would appear from a reading of the opinion, take this question into consideration, a rehearing should be granted and the question fully examined.

3. The Court has apparently overlooked the fact, as we contend, that in dealing with a municipality, a utility company is dealing with the agent of the legislature. Municipalities, so the Court holds, have and can exercise only such powers as are conferred by the legislature. An attempted exercise of a power not conferred does not bind the legislature—the principal. If, then, in this case, the contract was authorized, as the Court holds, can it be further held and supported by reason, that the principal—the legislature—can [fol. 84] later set the contract aside? When the previous decisions of this Court are analyzed, it becomes self-evident that they are inextricably intertwined with the single dominant and all-pervading thought that within the meaning and intent of the Constitution there is no contract. We submit, with the utmost respect, that in the opinion here the Court has attempted to preserve the effect of its previous decisions while denying to this appellant a protection under those decisions, and in so doing has inadvertently adopted a rule which finds its only logical support in a reason which, carried to its inevitable conclusion, destroys and strikes down the foundation upon which the said decisions are constructed, namely, that there was no contract immune from impairment. For this reason, it is submitted that there should be a rehearing of the case, and the

particular matter re-examined, in order that the effect of the opinion upon the previous decisions referred to may be fully considered.

4. In its opinion the Court has drawn such a theoretical difference between the power to regulate rates and the power to fix rates as, in practical application, amounts to the finding of a power from the absence of such power. If, as the Court holds, the particular municipality has power to fix rates by contract, that includes the power to change the rates by the same process, namely, passage and acceptance of an ordinance.

Respectfully submitted, J. T. G. Crawford, W. B. Crawford,
Counsel for Appellant.

On the 28th day of January, 1924, the said Supreme Court of Florida ordered that the foregoing petition for a rehearing of said cause be denied, the said order being in the words and figures as follows:

[fol. 85]

IN SUPREME COURT OF FLORIDA

[Title omitted]

OPINION ON PETITION FOR REHEARING

Per CURIAM:

The opinion of the Court draws no "theoretical difference between the power to regulate rates and the power to fix rates." 28 C. J. 574. Reference is made to rates fixed by the contract and the absence of legislative authority to regulate the particular rates complained of, which authority to regulate the rates, the legislature may exercise at any time under the power to do so that is reserved to the State and conferred by Section 30 of Article 16 of the Constitution upon the legislature, to be exercised in its discretion. The "existence" of power to regulate such rates is in the legislature under Section 30, Art. 16 of the Constitution; and the legislature may "exercise" the reserved and vested power notwithstanding a contract rate. The reserved legislative power to regulate rates irrespective of contracts fixing or prescribing rates, does not deprive municipalities of the power to contract for rates within its charter powers. The reserved legislative power to regulate rates merely makes all contract rates subject to regulation notwithstanding the contract, and the power being reserved to change contract rates, a change duly made does not violate the obligation of the contract. 176 N. W. 590, 10 A. L. R. 1328; L. R. A. 1917C 98. As between the municipality and the public utility company, contract rates are binding if duly stipulated for (*Miami Gas Co. v. Highleyman*, 77 Fla. 523, 81 South. Rep. [fol. 86] 775; 28 C. J. 575); but the legislature may at any time regulate the rates by due course of law. *Town of Brooksville v. Florida Tel. Co.*, 81 Fla. 436, 88 South. Rep. 307.

The legislature, in authorizing municipalities to contract for rates, and municipalities in making the authorized contracts, do not "contract or barter away their governmental powers." Such authority to contract may be conferred under Section 8, Article 8, or Section 24 of Article 3 of the Constitution, subject to the reserved power of the legislature under Section 30, Article 16 of the Constitution to regulate the contract rates, by increasing or decreasing or otherwise changing them as the public welfare may require. It is not claimed that the legislature has exercised its reserved power to regulate the rates here considered. The right to regulate exists in the legislature; but this alone does not destroy the right to contract for rates. And the contract rates cannot legally be ignored except by consent of the parties thereto, or by legislative authority duly exercised. See 128 N. E. Rep. 58; 225 N. Y. 216.

Rehearing denied.

Whitfield, P. J., and West and Terrell, JJ., concur.

Taylor, C. J., and Ellis and Browne, JJ., concur in the opinion.

[fol. 87]

IN SUPREME COURT OF FLORIDA

JUDGMENT—Filed Feb. 1, 1924

To the honorable the Judge of the Circuit Court for the Eighth Judicial Circuit of Florida, Greeting:

Whereas, lately in the Circuit Court of the Eighth Judicial Circuit of Florida, in and for the County of Putnam, in a cause wherein City of Palatka, a municipal corporation, was complainant, and Southern Utilities Company, a corporation, was defendant, the decree of said Circuit Court was rendered October 30th, 1922, as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the State of Florida, by virtue of an appeal, agreeably to the laws of said State in such case made and provided, fully and at large appears:

And whereas, at the June Term of said Supreme Court holden at Tallahassee, A. D. 1923, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the twenty-first day of December, A. D. 1923, it was considered by said Supreme Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant its costs by it in this behalf expended, which costs are taxed at the sum of — dollars; therefore,

You are hereby commanded that such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court and the laws of the State of Florida, ought to be had.

Witness, the Honorable R. Fenwick Taylor, Chief Justice of said Supreme Court and the seal of said Court at Tallahassee, this first day of February, 1924.

G. T. Whitfield, Clerk Supreme Court of Florida. (Seal of the Supreme Court.)

[fol. 88]

IN SUPREME COURT OF FLORIDA

[Title omitted]

CLERK'S CERTIFICATE

I, G. T. Whitfield, Clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing, consisting of 87 numbered pages, is a true and complete transcript of the record, in the cause above entitled, on an appeal to this Court from the Circuit Court of the Eighth Judicial Circuit of the State of Florida, in and for Putnam County, Florida, together with true and complete copies of the proceedings in this Court, including the opinion of this Court thereon, the motion of said appellant for a re-hearing of said cause, the opinion and order of this Court denying the said motion for a rehearing, and the final order and mandate of this Court affirming the judgment of said Circuit Court.

In witness whereof I have hereunto set my hand and affixed the seal of the Court at Tallahassee, Florida, this 17th day of March, A. D. 1924.

G. T. Whitfield, Clerk of the Supreme Court of the State of Florida. (Seal of the Supreme Court of Florida.)

[fol. 89] IN SUPREME COURT OF THE UNITED STATES

On Petition for Writ of Certiorari to the Supreme Court of the State of Florida

ORDER GRANTING PETITION FOR CERTIORARI—Filed April 21, 1924

On consideration of the petition for a writ of certiorari herein to the Supreme Court of the State of Florida, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.